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INITIATIVES FOR THE 1990'S

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BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING ON TRIBAL INITIATIVES FOR THE 1990'S

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INITIATIVES FOR THE 1990'S

FRIDAY, MAY 11, 1990

U.S. Senate,
Select Committee on Indian Affairs,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room 216, Hart Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The **Chairman**. Good morning and welcome to this hearing of the Senate Select Committee on Indian Affairs. This morning we will discuss tribal initiatives for the 1990's.

For the past 14 days more than 60 senior tribal leaders from across Indian country have been meeting to share their visions of the future of Indian country and to develop a long-range national agenda for Indian affairs. They have identified areas of consensus and commonality of goals—many of them fundamental to most Americans—but to Indian people objectives that have yet to be achieved, such as the opportunity for every Indian student to pursue higher education; health care services for all eligible Indian people not limited to life and limb-threatening illness or injury; decent and affordable housing with running water and sanitation facilities; access to a greater percentage of the funds that are appropriated for the benefit of Indian people; meaningful and relevant employment; and economic development opportunities.

Tribal leaders have also identified areas in which their priorities and needs differ and have discussed ways in which they can work together to assure that each tribe's needs are addressed, whether they be large or small in number, whether they be in remote isolated areas or located in the center of growing urban populations. For example, a traditional elder from the Warm Springs Reservation has spoken of the need to have large tribes help smaller tribes. The chairman of the Mescalero Apache Reservation has called for a national assembly of Indian leaders, and some have signed a petition calling upon the Federal Government to provide the support necessary to enable future national forums for tribal leaders. To firmly and officially establish the United States recognition of the sovereignty of Indian nations, the concept of an Indian ambassador to the United States or ambassadors from every Indian nation to the United States has been discussed. The chairman of the Sac and Fox

Tribe of Oklahoma has indicated that his tribe has been working on this concept for several years.

The need for a national Indian political network, the impact of recent decisions of the Supreme Court in the exercise of sovereign powers by tribal governments, and the economies of Indian reservations, and Senator DeConcini's legislation proposing a new federalism policy have all been the focus of discussion over the past 2 days.

Today we stand at the threshold of the future. We know that the future of Indian country will be shaped first and foremost by the Indian people—their elders, their leaders, and the generations of young Indian men and women who are even now expressing their vision of a better life for their people.

The members of the Select Committee on Indian Affairs stand ready to assist you in carrying out your agenda. Our programs and activities will reflect your direction and your objectives. We look forward to hearing from you leaders of Indian nations and representatives of Indian country of your plans, of your dreams, of your goals, and of your visions for the future of your nations and for all of Indian country.

To summarize the proceedings of the Tribal Leaders Forum that has been held in this room for the past 2 days, I wish to call upon our first panel consisting of Ms. Susan Williams, Mr. Joseph Meyers, and Mr. David Lester.

Before we proceed, I wish to announce that Senator John McCain, who wanted to be here, had to return to Arizona on urgent matters and has requested that his statement be made part of the record. Without objection, so ordered.

[Prepared statement of Senator McCain appears in appendix.]

The CHAIRMAN. Ms. Williams, it is always good to have you with us. Please proceed.

Ms. WILLIAMS. Mr. Chairman, if I might defer to my colleague, Mr. David Lester, to present testimony initially.

The CHAIRMAN. Mr. Lester.

STATEMENT OF DAVID LESTER, EXECUTIVE DIRECTOR, COUNCIL OF ENERGY RESOURCE TRIBES, DENVER, CO

Mr. LESTER. Thank you, Mr. Chairman.

I am David Lester, executive director of the Council of Energy Resource Tribes, an organization directed and controlled by 44 Indian tribes who own or control significant sources of energy resources that supply the Nation. We appreciate the leadership that your committee has shown over the last few years, particularly your effort to stimulate a discussion and a national dialogue on the long-term goals of the Indian affairs.

In many respects I feel inadequate to express all of the wisdom that came forth in the discussions of the last 2 days and prior to that to the discussions that we held in Oakland, CA earlier this year. I will do my best to put into perspective some of the issues and the underlying motivations in terms of the directions that I have perceived and understood both from the tribes that I directly work for and the views of the tribes that I heard throughout the discussions.

In that context, I think we all should remember that there are some current underlying historical forces that are shaping Indian affairs that lie outside the decisionmaking and policy arena of either tribal governmental officials, the Congress to legislate, or the executive branch to administrate.

First and foremost of this is the population explosion that Indian country is experiencing and has been throughout this century. Our growth rate today is about 3 percent a year. This is a world class population explosion which is outstripping—when added to the inflationary pressures on resources—the capabilities of all institutions, both tribal and Federal, to deal with social and economic opportunities for Indian people.

Second, there is a tremendous resurgence of the Indian and tribal rights that has sprung forth from Indian people symbolized by the activism of the Native American Rights Fund and other private Indian attorneys throughout the country, by legislation that has come out from the Congress in response to the needs as well as the political interests of Indian tribes and Indian people.

A third is the collapse of the historic equilibrium or structure in which Indian affairs operated in which the Federal Government, largely through the Department of Interior, controlled Indian resources and supervised Indian political life. In exchange, the private sector was able to access our resources and States were able to extend their interests into Indian country in the form of taxation and State regulation. In return, much of the social costs of the exploitation of our resources and our people were paid for in social programs by the Federal Government.

With the Federal budget crisis and the inflation and population explosion, along with the Indian Rights Movement, that old formula has collapsed and is no longer working. Out of that arena then has come forth the stated Federal policy of self-determination, self-government, and social and economic development for Indian tribes and Indian people. But old precepts and old ways die hard, particularly within the bureaucracies all over the world. Ours here at home are no different. Tribes are asserting the rights that they have long held—these are not new rights nor are they new concepts—that they are separate political, economic, and cultural entities. They are neither political subdivisions of States nor administrative subdivisions of the Federal Government.

Within this dynamic environment three major goals have emerged as expressed by elected leadership of Indian people, and that is the political legal rights of self-government to exercise their rights as modern governments in their own institutions and in their own political processes, to promote their own tranquility and safety internally, improving the economic and social opportunities available to those who reside within their jurisdictions, and to be able to interact on a level playing field both in the political and economic arenas with other systems within the United States.

Flowing from this, they also desire to build stable diversified local tribal economies that provide the financial security for tribal members and the families of the tribe while at the same time providing an economic base for tribal services and tribal social institutions so necessary to all modern societies.

To achieve these two economic and political self-governance goals, tribes have identified human development as a key component of any future strategy. That seems to break into two areas. First, is to build their own technical competency and to diminish and eliminate technological dependence on the outside world; and, second, to be capable through their own people of achieving their political and economic goals while at the same time retaining their own cultural competence and literacy, which is important. And to emphasize what I think I heard in the dialog is that what this is about is the reconstruction of Indian societies, not the assimilation of Indian societies into the larger society and thereby eventual elimination of tribes as distinct political entities, distinct cultural entities, and distinct economic entities. Underlying all of this is the motivation to preserve tribal spiritual values by giving them expression in their own tribal societies' political, economic, and social institutions and processes.

Chief Mankiller of the Cherokee Nation, in a meeting last January, I think sums it up pretty well. She said, "We want to enter the 21st century on our own terms—that each tribe is unique and deserves to be respected and treated as a unique, distinct entity; that tribal primacy and control is key to the realization of these goals as well as to the accomplishment of Federal policy objectives."

Thank you.

The CHAIRMAN. Thank you very much, Mr. Lester.

Ms. Williams.

STATEMENT OF SUSAN WILLIAMS, ATTORNEY, GOVER, STETSON, WILLIAMS & WEST, ALBUQUERQUE, NM

Ms. WILLIAMS. Mr. Chairman, committee staff, my name is Susan Williams. I am from Albuquerque, NM. My law firm represents Indian tribal and Native Alaskan governments throughout this country on both a general and special counsel basis. We have undertaken this representation for approximately 10 years. I also have participated in the first 2 years of what I hope will be a continuing series of meetings of tribal leaders gathering together to try to develop a consensus regarding legislative priorities for the 1990's. While I emphasize that my remarks on specific legislative strategies are based on these two meetings, they are very preliminary. We hope that there will be additional meetings and, as these meetings occur, more specific legislative strategies and priorities I am sure will be developed over the next several months.

David Lester has outlined some key factual and conceptual cornerstones for an Indian legislative agenda. Before I turn to specific suggestions for legislative action that have emerged from the first two of these tribal leader meetings, let me underscore what I consider to be four bedrock principles that should guide Congress' consideration of legislation over the next several years affecting Indian tribes.

First, the problems afflicting Indian people on their reservations are multi-disciplinary in nature. Whether the issue is economic development or jurisdiction or health care, the overlap that exists in causes and solutions is increasingly obvious. As an example, in the economic development arena, the causes of a sustained underdevelopment or lack of development on the reservation include intrusive State taxation on the reservations creating disincentives for businesses; uncertainties over tribal, Federal, and State jurisdiction on the reservations; and, of course, a grossly inadequate educational system and absence of development infrastructure. Addressing this problem of economic development accordingly will be a multifaceted problem and the solution must be multi-faceted in nature.

As a second bedrock principle, Congress' recognition that the difficult circumstances on Indian reservations is critical and that recognition has to be that there is over a century of ill-conceived, inconsistent, morally repugnant, and, in effect, discriminatory Government actions that have caused Indian people to experience some of the worst social conditions and economic conditions that exist in this country. The U.S. Supreme Court has issued a jurisprudence which makes clear that where specifically targeted discrimination has occurred drastic remedial affirmative actions are not only permissible but are desirable. Setting that in the context of Indian reservations, drastic remedial affirmative action is critical for Indian tribes in the 1990's. That action is not only required by principles of morality, but that action is also required by the treaties under which Indian tribes ceded vast areas of land in exchange for the U.S. Government promise to assist tribes in achieving self-determination and economic development.

The current Federal Indian policy of supporting the strengthening of tribal self-government and the economic development on the Indian reservations can only happen through a very, very substantial Federal commitment in dollars, resources, and attention to the Indian tribes. Now concededly, in the Gramm-Rudman era, this task is quite daunting. The kind of affirmative action that is needed to free tribes from the over one century of oppressive Federal policy is going to be a politically treacherous task that lays ahead of us. But that substantial Federal commitment to a well-conceived, multi-disciplinary strategy must be attained or, Mr. Chairman, Congress simply should admit that it has no Federal Indian Policy and that Congress chooses instead overtly to sustain essentially systemic degrading poverty on the Indian reservations. Congress, I would argue, cannot make this choice consistent with the ideals that this country represents, such as fulfillment of contracts—namely, the treaties entered into with the Indian tribes; the principle of equal opportunity for all; and, of course, honorable treatment of this country's first citizens.

As a third bedrock principle, there needs to be some sort of standard of set of standards against which we, the Congress, can measure the progress of the Indian nations. Whether it be in health care or economic development or educational attainment, we must establish minimum goals for the 1990's. I think the tribal leaders have begun that process. We need several more meetings in order to get those specific minimum standards that we should set as targets for Indian attainment in the 1990's.

Finally, the diversity of Indian tribes throughout this country cannot be overlooked as we gather thoughts and develop ideas regarding solutions. The solutions, the opportunities that we provide tribes must be sufficiently flexible so that we are able to reach out not only to the large resource endowed tribes but to the very small tribes that are not equipped with natural resources or other endowments.

Let me now turn to specific pieces of this multi-disciplinary strategy. As I said earlier, these pieces have emerged from only two rounds of tribal leader meetings that have occurred in January and only in the last several days. More meetings are necessary. I would urge that Congress provide the means for these meetings to occur over the next year. I would urge that foundations be sought and their assistance to continue with these meetings of tribal leaders to achieve more diversity in the tribal leadership than we have been able to at the present time. But based on the discussions thus far, here are some key points regarding specific legislative needs that have emerged.

As Mr. Lester indicated, tribes have made very clear that the number one priority for Indian country in the 1990's has to be the protection of tribal sovereignty. In the last term of the U.S. Supreme Court, the Court made very clear that its idea of Indian sovereignty is very different than what we understand Congress' idea and certainly what the Indians bargained for in their treaties is. Mr. Chairman, tribal sovereignty is under vigorous attack at the present time in a number of respects. If Congress does not make clear what the Federal-tribal relationship is, in the next several years we will see a continuation of the decline and the diminishment of tribal sovereignty to the point that tribal government frankly will be meaningless in the 1990's. We need congressional support now or the States will reign on the Indian reservations in the next 5 years.

One of the priorities under the tribal sovereignty rubric is, of course, the development, protection, and support of tribal courts. Mr. Joe Meyers will elaborate on the needs that have been identified in this critical arena.

As a second tribal sovereignty initiative, the problem of intrusive State taxation on Indian reservations—which of course is related to the economic development arena where long-standing obstacles to development have stunted economic development on the reservations—the problem of State taxation must be seen in both of those arenas. Senators DeConcini and McCain have introduced legislation that would provide Federal tax incentives for development. This is only part of the problem. We must deal with the question of State taxation not in 2 or 3 years, the period of time it likely will take to enact legislation of this sort, but there must be a shorter term solution.

One of those that tribes are seeking is to negotiate with States accommodations that result in tax sharing between the States and the tribes. Those accommodations however can probably only achieve a level tax playing field—that is, equal on and off reservation total tax burdens. There must be incentives provided for States to come to the table. After the Cotton Petroleum decision in the 1989 term of the Supreme Court, those of us that are engaged in such tribal-State negotiations found that the States' interests in negotiating a concessions of their taxing jurisdiction on the reservations was chilled. We need some Federal support perhaps in the way of financial incentives for successful negotiations. Cost recovery for consulting expert or legal fees incurred in these negotiations might be advisable. Policy objectives/criteria for these settlements Congress might be able to provide, which again will provide the leverage that we need to get back to the table and to see what we can work out on our own, that is the State and tribal governments. Nonetheless, there will come a time when the United States must enter this arena and assist us in not only achieving equal on and off reservation economic opportunities, but we need some additional incentives to get sustained and meaningful development initiated on the reservations, and we will be back to the Congress for that assistance in the next several months.

Tribal leaders identified the absence of the reservation development infrastructure as a key obstacle to tribal sovereignty and health of the citizens of the reservation. Roads, telephone lines, electricity, and so forth—there is such a lag in that infrastructure on the reservations that the tribal leaders identified substantial Federal support as key in addition to the on-going initiatives of the tribal governments to establish this development infrastructure.

Police protection on the reservations. There are many reservations that rely on the BIA police to keep the law and order. Law and order funding for the reservations is grossly inadequate. I cannot emphasize enough the grotesque and unacceptable stories that are emerging from the reservations. Just 2 days ago at Wind River one of the tribal councilmen's son was mauled by three non-Indians who came onto the reservation knowing full well that there was going to be no police there to protect the people. They attacked this young man, left him for dead, BIA police were called, they were unable to assist. There just wasn't enough funding on the Wind River Reservation to provide an adequate police force. We need to deal with this problem. The citizens of the reservations are entitled to the peace that all citizens are entitled to and we lag far behind in that particular respect.

A second priority that tribal leaders have identified to date is education. As one example, the BIA has a system of funding the schools on the Indian reservations that does not result in funds being available at the beginning of the year. As a result, the BIA Boarding Schools each year are unaware of what kind of allotment and funding they will have available. The overhead that goes into figuring out where they are going to get lines of credit, where they are going to get the funding, what programs will be cut off and postponed complicates and really stunts the effort to get on with the very important task of education.

There is a growing sense among the tribal leaders that the programs that the U.S. Department of Education should be contractible pursuant to Self-Determination and Education Assistance Act. At the present time, because those programs are at the Department, we are unable to contract them and bring them under tribal control. We need to give some thought to how tribes increase tribal control over the Departments now situated at the U.S. Department of Education.

A third arena of priorities that tribal leaders have identified are, of course, in the natural resources and environmental protection arena. Land retention probably is the most key aspect here; and by that I mean not only retaining title to the land but for protecting the quality of the land and water on the reservations. Congress enacted amendments to the Clean Water Act, Safe Drinking Water Act, and Superfund to provide tribes with the means to develop their own water quality and protection programs. The sad reality is there are insufficient funds to accomplish these important objectives and as a result tribal governments uniquely in this Federal system do not have the means to protect the reservation environments. States do not take that responsibility, they do not have jurisdiction in most instances, and the Federal Government is conducting only minimal protections. That fact must be dealt with by this committee along with the Appropriations Committee and we must get tribes the funding and the technical assistance to develop the environmental protection programs desperately needed on the reservations.

As a second category in the natural resources arena, a number of tribal leaders asked that Congress look into the question of the irrigation systems on the Indian reservations. The operations and maintenance system must be investigated and we believe it should be replaced with a scheme that accords Indian farmers the same kinds of Federal subsidies—and I emphasize massive Federal subsidies—that have gone to the non-Indian farmers throughout the west. Incentives for improved agriculture and expanded farming development on the reservations can be had through a revised operation and maintenance system in part.

The importance in this arena of protecting the cultural and religious rights of Indian tribes was emphasized repeatedly. Mr. Chairman, as you know full well, Indian tribes' religious beliefs are tied integrally with land and other physical objects. As a result of the last term of the U.S. Supreme Court—I should say the current term of the Supreme Court—with the Lyng decision and now the organ services decision, there is not a whole lot left of the First Amendment to the U.S. Constitution, and tribes are going to bear the brunt of the lack of religious freedom protections that exist now as a result of this Supreme Court. Congress can change that law. Congress can say that here are the religious rights of Indian tribes and they will not be infringed by State action or by private action. We encourage Congress to persist with the Religious Freedom Amendments that it has under consideration, and I think the tribal leaders will continue to look at that legislation and give you specific suggestions about what may be needed in that arena.

Mr. Chairman, I thank you for this opportunity to testify. I join Mr. Lester in commending you, in particular, and this committee and its staff in reaching out to Indian country and providing the means and the catalyst for the first time effort among Indian tribes throughout this country to come together and achieve a consensus on important legislative and other matters. We believe that the initiatives that you have helped catalyze will be important in many arenas. As never before, Indian tribes must come together and develop priorities not only legislatively but in the courts as well. We can ill afford after this last term of the Supreme Court to present less than the most sympathetic case to the U.S. Supreme Court. Similarly, we cannot afford to present anything less than the most sympathetic case to the United States Congress, and we appreciate the opportunity that you have afforded us to do just that. Thank you.

The **Chairman**. Thank you very much, Ms. Williams.

May I now call upon Mr. Meyers.

STATEMENT OF JOSEPH MYERS, EXECUTIVE DIRECTOR, NATIONAL INDIAN JUSTICE CENTER, PETALUMA, CA

Mr. **Myers**. Thank you, Mr. Chairman. My name is Joseph Myers. I am the Director of the National Indian Justice Center. I, too, appreciate the opportunity to appear before the committee and to offer this statement. I would also like to add to what Susan said that those of us who work in Indian affairs to help develop tribal government institutions are very inspired by your commitment, the commitment of other members of the committee, and also of the staff. The hard dedicated work that they do is recognized by all of us.

In framing initiatives for the 1990's, I think careful consideration has to be given to the status of tribal courts in the operation of tribal governments. It is a very critical issue at this time and I think will be a critical issue well into the 1990's. There are several major issues that need to be addressed in the area of tribal courts, and this morning I would like to focus on four of those issues.

The first one is the most obvious one and that is funding. The Federal dollars for the operation of tribal courts historically have been very deplorable in terms of meeting the need. Tribal courts are sorely underfunded and at this particular point in the 1991 budget there has been an increase from $9 million to $11 million for judicial services in the BIA; however, $823,000 of that $2 million increase has already been allocated to base funding for 8 tribal courts in 1990. So the net gain is almost $1.3 million, which is very insignificant.

Back in 1986 the Administration of Federal Courts made a projection at the time Senator Melcher was introducing the Magistrate Bill in the Congress and at that time the projected cost of putting one Magistrate Court in Indian country would be $300,000 for the development of it and $250,000 annually for the operation of one court. If you project the number of tribal courts in Indian country, multiply the $250,000 figure against the number of courts, you come out with almost $40 million. I consulted yesterday with the president of the National American Indian Court Judges Association and talked about some figures in terms of basic operational needs. He has done some work in this area and he informs me that the floor funding for tribal courts should be $182,500, and that is for one judge, one court clerk, a secretary, and for operational costs.

At the present time I know of several tribal courts in Indian country that operate on budgets of $32,000, which is an extremely abysmal figure when we look at the what the importance is of the work of tribal court systems. There is a natural tendency to look with disfavor on the operation of tribal courts from the public both on and off the reservation because of the inadequacy of funding and inability of the tribal courts to improve facilities and improve services. With that kind of funding, it is an extremely difficult proposition.

If we multiplied the $182,000 figure, by the number of tribal courts that exist today, we come up with a figure of approximately $27 million. So it is considerably more economical to fund the minimum base of tribal courts than it would be to put U.S. Magistrate Courts in Indian country.

I think that one of the concerns, and it may be addressed in a new bill that is being drafted, is the manner in which tribal courts are funded under the Indian priority system. Tribal courts to have to compete with tribal programs under that system. Sometimes it causes politics to be played with the operation of tribal courts. So there needs to be a strong look at how we deal with the funding into the future. Also, we must attract young people into careers in legal work in tribal institutions, to have young Indian lawyers work in tribal courts in the future. We can't attract those people if the funding and the salary levels are so low that the tribal courts cannot compete with other agencies.

The second issue that is of great concern to me and I think to many tribal leaders in Indian country, certainly to many judges, is the need to deal with the judicial independence of tribal courts. The U.S. Civil Rights Commission made several different trips to Indian country and there were reports of difficulty in securing the independence of the judiciary on some reservations. I would like to say that there are many progressive tribal governments with very strong judicial independence mechanisms at work; on the other hand, there are those tribal governments where judicial independence is an issue. I think that tribal leaders have to be persuaded—not forced, but persuaded—to take a very careful look and to resolve this issue of judicial independence and integrity. There is no magic in the term separation of powers, but I do think that judicial independence is something that we have to look very strongly at because if we are looking at programs for economic development, the protection of the environment, and the protection of the people of Indian country, the tribal courts in the future have to play a significant role in those protections. The credibility of tribal courts stands on the issue of judicial independence.

The third area is resources for tribal courts in terms of training and technical assistance. The National Indian Justice Center has provided training by contract to tribal courts around the country over the past 6 years. The training moneys that are allocated in the BIA Budget are not significant enough to do as much training that needs to be done and to deal with the technical assistance that needs to be afforded tribal court systems.

The fourth area is the area of jurisdiction. Before the U.S. Supreme Court at this time are the *Duro and Graywater* cases, which are cases that, if the Supreme Court rules negatively to Indian interests, will further deteriorate the criminal jurisdiction of tribal courts. The issue of somebody not being liable to tribal court jurisdiction for violating tribal law seems to me to be extremely outrageous. Under any circumstances, off the reservation that kind of non-liability does not occur. Indians can't come to Washington, DC and break the laws of the District and claim to be Indian and defend on that basis and walk out of the jurisdiction free of criminal liability. But non-Indians can do that in Indian country. I think that there needs to be a clarification of jurisdiction, a statement of jurisdiction in the criminal area legislatively. As Susan said, in the past session of the Supreme Court there has been extreme damage done to the civil jurisdiction of tribal courts.

Those are the four areas of concern with regard to tribal court operation. Thank you for your time.

Ms. WILLIAMS. Mr. Chairman, if the time permits, I would like to take just 2 minutes to make a personal observation on two initiatives that are underway in the committee that we in Indian country and in the Tribal Leaders Forum, in particular, have not had an opportunity to really analyze them. These two proposed pieces of legislation are the Indian Finance Development Corporation bill and the New Federalism for Native Americans legislation. Let me just say that both of those pieces of legislation show great promise.

The Development Finance Corporation bill will provide critically needed flexible funding for economic development in Indian country. That funding, frankly, does not now exist because the BIA's Loan Guarantee and Credit Programs are underfunded and undermanaged. We believe that the Finance Development Corporation can undertake these kinds of activities in a much more innovative and helpful way and we encourage the work of the committee to get this legislation enacted as quickly as possible.

The New Federalism for Native Americans bill that Senator DeConcini and others have just introduced I think shows great promise. The basic concept would be to provide tribes that chose to opt into this legislation a core entitlement—in other words, a financial base and foundation of funding for the tribal government that cannot be taken away. This assured flow of income on an annual basis can be leveraged by the tribes in a number of critical ways. We look forward to working with you, Mr. Chairman, and Senator DeConcini and the others of the committee, to refine this piece of legislation and to really make it work for Indian country. We expect that the Tribal Leaders Forum will be looking at that piece of legislation very closely. We appreciate the efforts that you have undertaken with respect to these two initiatives.

The CHAIRMAN. I thank you very much, Ms. Williams.

In the past 3½ years, I have conducted at least 100 hearings and must have spent at least 700 hours receiving testimony. I look upon today's hearings as very likely the most important of all that I have presided over because here we begin to see the evolution of the development of a unified Indian country. We are now beginning to come forth, albeit in its infancy, with a consensus. For the first time we have a presentation of priorities and I tried to indicate at these two tribal leaders' forums that we have tried our best to respond. But up until this moment our response has been to parochial needs and parochial problems, never on a national basis other than selected legislation. So I welcome your words of wisdom and I wish to work with you.

I have tried to discipline myself so that I can honestly carry out the mandate that I made for myself—and that is we will listen to you and act upon your guidance. After all, it is your Nation; it is your future that we are concerned with. However, much as I would like to adhere to that discipline, there are times when temptations get too great.

In all of the years that I have served here working with numerous historians and anthropologists, I find that throughout the history of mankind civilizations have existed and whenever they have existed over long periods of centuries, there are certain elements that are common in all. One, they were able to maintain and protect their cultural identity. They are able to identify themselves through history, through legend, through heroes—there is cultural identity.

The other thing that always stands out is this element of spiritual identity. You may call it religion or whatever you want to call it, but they all have this. The Jews have existed for 4,000 years and they have done this through periods of slavery, dispersal, ghettos, concentration camps; but they have had this cultural identity. In the case of the Indians, we have had policies of termination, starvation, slavery, et cetera, and they still got through. There is always this drive of survival. We find these elements throughout the history of Indian country.

But then that alone is not sufficient for people to live as human beings, it is just survival. Like you, I have considered the matter of sovereignty to be of the highest order because without that, then you begin to lose your cultural identity. In this area, I would hope that Indian country would begin debating some of my provocative thoughts.

In every sovereign entity, there is an independent executive, an independent legislative council or tribal council, whatever it may be called; an independent judiciary; and a law and order system that is imposed upon themselves by their consent. If you have law and order imposed upon a so-called sovereign entity from the outside, that lesser sovereign is not a real sovereign. So I have always looked upon these strange arrangements that Indian country has adopted over the years of having the State provide law enforcement or the BIA provide the police as weakening that sovereignty in my mind. I would prefer to have Indian tribes get together because there are big tribes and small tribes, and those smaller tribes may not be able to afford police protection. But you will notice in the United States, no matter how small the villages, they will have their own police. It may be one police officer or one sheriff, but there is always this police power. In Indian country we may not be able to afford even that, but if we can provide a regional police force that can provide this service to the smaller Indian nations, it might be something to consider.

And that should also be considered in the judicial system. There are many smaller tribes that may not be able to afford their own judicial system but in our Nation we have always had a history of circuit judges. In the old days, they travelled on horseback, going from one township to another. You are so right in the necessity of the U.S. Congress articulating tribal sovereignty both legally and philosophically. I hope we can work with you to articulate this into legislative language and legal language because I think it is absolutely imperative.

Then you spoke of funding—in each category, there is a need for greater funding—you need funding for law and order; you need funding for the judicial system; you need funding for the government infrastructure. The question arises, "what should the nature of funding be?" I have studied the relationship of our Government with the governments of Indian nations and I cannot help but conclude that over the years the U.S. Government has developed a system that has made Indian nations almost totally dependent upon this Great White Father to a point where you are almost welfare recipients, which has many negative aspects. It takes away pride, it takes away sovereignty.

Should we just continue providing assistance—paying for the judges, paying for the police, paying for infrastructure—or should we place greater emphasis on paying for the tools by which you can develop your own resources. I notice you requests resources to develop judges and court systems, instead of having BIA send their judges over, or BIA send their clerks over. I think it is a matter that should be seriously considered. Should we continue just dribbling in small amounts each year in the annual budget process, or should we begin an ambitious program of developing resources through which Indian country can develop their own independent judicial systems; independent law and order systems; independent economic systems, and political systems.

I think what is happening now is absolutely exciting because I think we see a renaissance. If we work it properly, it could be the beginning of the restoration of the grandeur and the glory of the Indian people because the stereotypes that have developed over the years and still linger are very negative. I think that the opportunity is now presented to us to shatter these stereotypes, and I can assure you that I stand ready to serve you.

Your call for the strengthening of your religious rights is right on target. I can assure you that we will do everything possible to assist you in that.

Needless to say, education is basic. You can have all the ideas but if we do not have the people to fill the positions that these ideas call for, then we will have non-Indians filling these positions. I have gone to all these clinics throughout Indian country and the only Indians I see are the ones who clean the bottles and who are the clerks. We need Indian physicians and Indian nurses. As I indicated yesterday, though Gramm-Rudman is a reality, we should never be small in our ambitions. We should seek the absolute star, and I stand ready to work with you.

So I thank all of you for the contribution you have made and I can assure you that I will do everything possible to provide the resources that will make it possible to continue this process. We stand ready to receive your advice and we will work on that advice. This committee wants to do that. We don't want to just keep ourselves busy and going off in 50 different directions; we want to focus our efforts in one direction, a direction that you will dictate to us. I speak, I believe for all members of this committees in thanking you for what you have done for us.

Thank you.

Our next panel consists of the chairman of the Confederated Salish and Kootenai Tribal Council, Montana, Michael Pablo; the chairman of the Hoopa Valley Business Council, Hoopa, CA, Dale Risling; Joseph De La Cruz, president of the Quinault Business Committee, Washington; and the president of the Tlingit and Haida Central Council, Juneau, AK, Ed Thomas.

Is the chairman of the Hoopa Valley Business Council here?

Who will start first?

Mr. PABLO. If it is okay, Mr. Chairman, I will proceed. I am Michael Pablo.

Mr. Pablo, you may proceed as you wish.

STATEMENT OF MICHAEL PABLO, CHAIRMAN OF THE CONFEDERATED SALISH AND KOOTENAI TRIBAL COUNCIL, PABLO, MT

Mr. PABLO. Good morning, Mr. Chairman. I am Michael Pablo, chairman of the Confederated Salish and Kootenai Tribes of the Flathead Nation in Montana. We presented written testimony and I think what I will do, with your permission, is somewhat deviate from that this morning to go through—

The CHAIRMAN. I am can assure you that all of your prepared statements will be made part of the record.

Mr. PABLO. Thank you, Mr. Chairman.

I think perhaps to best describe what we feel is our destiny to determine our own destiny, I need to go through and bring out some of the processes and some of the procedures that we are doing. Many times the reason we are able to go out and do things differently than other tribes is because we have been blessed with having an abundance of natural resources; therefore, many things that we do, other tribes cannot do because we can sell resources to benefit our people. One of these days the resources may be gone and then we will be in a position where we will be arguing with States over taxation and everything. So I would just like to go through some of the things that we are doing. It is just that where we are we have resources on the reservation that make this opportunity available to us, and we will certainly help any other tribe that we can in any way that we can.

I think the structure of our tribal government is very important. We have two cultural committees. The Confederated Salish and Kootenai tribes have two distinct languages and cultures. The two distinct cultural committees answer directly to the tribal council. They are our tie in with our elders. If we have a timber sale, any proposed construction, anything that could affect the cultural integrity of the tribe, the cultural committees come to the tribal council and say you need to stop that, that is stopped. Many times it has cost us dollars as far as timber sales, but when an issue comes up and the cultural committee says the elders say you need to do something different, we do something different.

We have class I air on the Reservation. We got that designation about 7 years ago and we are working now with trying to get an ordinance and regulation in place. Any time you get into an issue with jurisdiction, you usually end up in court. Although the treaty rights are there, people know what the established law is, when it comes to an issue of jurisdiction, you usually end up in court.

We have an Ordinance 64(a), revised, a Shoreline Protection Ordinance. That ordinance came about through the *Neiman* decision. It was an ownership question on the bed and banks of the south half of Flathead Lake. In the early 1940's Montana Power had a lawsuit, it went to the Ninth Circuit, it was *Rochester* v. *Montana Power Company*. The Ninth Circuit declared at that time that the tribes owned the bed and banks of the south half of Flathead Lake. The *Neiman* decision in the 1970's, the same issue on the same body of water, had to again go to court to get the same ruling to again say that the tribes, indeed, owned the bed and banks of the south half of Flathead Lake. Certiorari was denied on that by the U.S. Supreme Court.

We have Ordinance 87(a), the Aquatic Lands Conservation Ordinance, which protects all aquatic lands on the Reservation. If we end up in an issue on that, we may again be back in court. Although the treaty is there, the rights are there, we have to go to court.

We have Ordinance 44(d), an ordinance approved by the Secretary of Interior, where we exert civil jurisdiction over everyone fishing and hunting on the Flathead Reservation. We have just recently gone to court with the State of Montana on that issue after negotiations over three years finally broke down, but we did try to negotiate.

We are in the process of taking over the National 404 permitting process from the Corps of Engineers. We have worked on that and we are getting ready to make that step.

We are working with the EPA on the Amendments to the Clean Water Act to begin implementation of that. We are now proceeding in that direction.

We are a co-agency with Montana Power Company for the Kerr Dam. That is a 180 megawatt hydro-electric facility on the Flathead River. We negotiated a joint license and it is I believe the first time in the Nation that a tribe negotiated with a power company for a joint license of a hydro facility. We will take over complete operation of Kerr Dam in the year 2015.

As far as economic development, we have a post and pole and small sawmill operation on the reservation which provides jobs for about 400 woodworkers and about 70 jobs at the sawmill itself. This is all a tribal project, funded with tribal dollars.

We have an S&K electronics plant which we have had for 7 years. For the last year we have been trying to get 8(a) status through SBA but we keep getting the run around. Even with their new regulations, we still just found out that our application just got out of the local State office last week. We may now be in the process of having to seriously consider closing the operation down because we are unable to get 8(a) status.

On Defense contracts, although we had over $9 million in Defense contracts, it is very hard for tribes to work with Defense contracts because of the cash-flow problem. If there is a question on any product in the contract itself, there is a long time delay before any dollars come in. That really drains your cash and makes your cash-flow difficult.

We have a tribal credit program which has $15 million in assets. That is a revolving credit program. The Bureau does not have any funds in the program. When the Bureau had funds in the program, they were dictating to us and telling us what to do and we invited them to take their dollars and get out and we would probably do better on our own, which we did.

We are looking now at a Flathead Bay resort. It is a combination hotel-condominium-convention center on Flathead Lake. It is about a $4.2 million project. We are in the process of securing financing through the private sector for that right now.

We have this year established an agricultural demonstration project to look at getting into the agribusiness. On the Flathead Reservation, nearly half of the land was lost to the tribes and individual owners because of the General Allotment Act. That has always been a problem and if we can get a self-sustaining agribusiness going, we may be able to purchase back the lands that the United States gave away from our homeland.

As we move forward into the future, I feel just like many others have said today that we are on the threshold of rediscovering the native Americans. I think many things have been said at this forum that I am in agreement with. I believe we need a national agenda. That has long been missing. It is very difficult because to get a national agenda we have to remember that each tribe is unique and we need to respect that uniqueness and we also need to help.

The mention of an ambassador possibly to deal for American Indian issues I think has tremendous possibilities. Something different. Many times we come in and say this isn't working when yourself, Mr. Chairman, or someone else asks us. I have been guilty of this myself. When asked well what would work better? I don't have an answer. I can be very negative but if I don't have the answer, how do you know what to do.

So with that, I would like to close by just saying that we have a long way to go but I feel that through the efforts especially of yourself, the members, and the staff that we are in the process of moving in the right direction.

Thank you.

[Prepared statement of Mr. Pablo appears in appendix.]

The **CHAIRMAN**. Thank you very much, Chairman Pablo.

Obviously, from the standpoint of natural resources, you are much more blessed than most of the Indian nations. You have indicated very graciously that you wish to share these blessings with others. What sort of relationship do you have with your neighboring tribes and nations in the economic sense, political sense, social sense?

Mr. **PABLO**. In the political sense, we work very closely. We have the Montana-Wyoming Tribal Chairmen's Association where we try to get together at least once a month to work on issues that affect all tribes. Economically, we have not reached that point of working as businessmen with each other. We have entertained ideas such as doing business with each other's enterprises. If we can get to that point, I think that would be a great step forward. And on the economic development side, looking at the highline region, of working together to bring industry and everything into that area, we are just stepping into those new areas as we move along.

The **CHAIRMAN**. Thank you very much, Mr. Chairman.

I now call on President De La Cruz.

STATEMENT OF JOE DE LA CRUZ, PRESIDENT, QUINAULT BUSINESS COMMITTEE, TAHOLAH, WA

Mr. De La Cruz. Thank you, Mr. Chairman. As always, it is a privilege to come before you and this distinct committee. I have submitted written testimony, but I want to stray from that a little.

I concur with the problems that were pointed out by the previous panel as far as our relationship with the administration. I have testified before this committee many times in the past several years. From the 100th Congress onward, I think we have come into some exciting times under your leadership and with the passage of Concurrent Resolution 76.

The four leaders sitting at this table here now, I don't know if we were in the right place at the wrong time a couple of years ago when Congress was reviewing the articles that were in the Tulsa Tribune that the committee had hearings on, and out of that the Self-Governance Demonstration Project came about. There were 20 tribes that were to be pilot tribes in that project and in the extensive hearings in both House and Senate, Mr. Chairman, your remarks at the closing of that hearing were that this committee did not know if the Self-Governance Demonstration Project provisions would work, that it might fail, but that we need to try something different. There were 10 tribes that were willing to take the risk.

For the past 2 years it has been risky. It hasn't been easy to try to carry out the initiative and the commitment that the 10 tribes entered into. We are now going into our 3d year. There hasn't been cooperation; we didn't expect it from the BIA or the Department of the Interior. Four tribes submitted letters to negotiate earlier this year. It took several months to get a response. We asked for an independent negotiator and they appointed one within the Department of the Interior. We submitted our grant applications to receive money to begin the negotiation process and again we are going through the same BIA game plan administratively that has happened since the beginning of this project. I said the project was risky. We have put on our own symposiums on this project, we have published Planning our Own Future to try to educate our own people, to educate other tribes that were interested in this project. There are a lot people out there who would like to see the status quo, afraid of making the change. We have a long way to go even in our own communities. There is always risk with change and it is very difficult for people to realize that some of the changes that we are faced with as Indian people are changes that possibly could be and will be for the good of our people and the good of future generations.

Tribes in the State of Washington where I come from, as you are aware, negotiated with key people of Government, sitting in United States-Canada negotiations with three States with the United States and Canada. Basically, we started into those negotiations with only our own resources and our own will and we prevailed and we were able after the negotiations to get assistance from the U.S. Congress and Fisheries and Forestry to carry out our part of those negotiations.

Again, because of conflicts between tribal governments over resources, over territory, over jurisdictions, the leadership of tribes of the State Washington, through our Northwest Fish Commission Chairman Billy Frank, were able to bring together all the players and negotiate a timber, fish, and wildlife agreement on how timber resources could be managed and exploited.

Last week I sat in a retreat up in the beautiful island in Puget Sound in the San Juan Islands with 22 tribal leaders, representatives of the State government, private utilities, public utilities, environmentalists, and people from and municipal governments trying to work out the framework on water rights. We live in the most rainy part of the country, yet we have got a water crisis as in other parts of the country. But the tribes are there, they are at the table, they are recognized as governments.

The big drain as I see it on our time and efforts is trying to carry out the mandates that we worked on with this committee. We got title III passed a couple years ago. The Administrative branch is still moving through developing regulations on Title III on the Self-Determination Act Amendments. We have sat down with them; we've appointed our best people to sit on those task forces to work out those regulations. We tried to pull the Indian Health and BIA together as the U.S. representatives and they have split off and come back together, but our team has stayed consistent. We need those regulations to move forward.

As I was back here this week, I find that Indian Health central office moves back all the contracting authority and pulls it back over here to Rockville. We initiated various investigations and things on IHS spending, knowing our people are suffering out there—Indian Health is only meeting 45 percent of our needs and our people don't understand that we have to have them go see State welfare and Medicaid and Medicare—and some of the investigations that occurred pointed out the deficiencies in Indian health in their contracting process, particularly the third party billing process that they have. So they pull it back to the central office. Their investigation is targeted on the lowest element of Indian health down at the tribal level, at the service unit level; nobody looked at the upper level. So now the decentralization that we worked for over the last several years is now pulled back and we have to go through the layers and layers of Government. That is why as a tribal leader I supported as a path to step into the Self-Governance Demonstration Project.

It is the tribal governments and Indian people that are always on the front line of what is happening to Indian people, it is no one else. As time goes on, it seems like we end up with more complicated processes. I don't know if self-governance is going to be the answer. The new bill that was introduced by Senator McCain of this committee and Senator DeConcini is new federalism. I think self-governance is very mild. It is those of us who chose to try to pioneer a new path, working with this committee, working with the Administration to try to find a better way for our people. We haven't had the cooperation that we need to move this project forward from the Administration side of the Government. I know that over on the House side Chairman Yates was very tough on the Department of Interior over where we are with the Self-Demonstration Project.

All the things that were pointed out by the previous panel as far as the shortfalls of legislation we worked on with this committee—the Indian Child Welfare, the courts, the human social service programs—we sit out there after you administer those programs with short dollars, short funds, and try to make something work as a government. We are the ones that are on the point. I don't know what the answer is. I certainly think that my staff, the Lummi Tribe, the Jamestown Klallam Tribe, and the tribes that were committed to the Self-Demonstration Project definitely need the support of this committee to make the people over at Interior respond positively to where we are trying to head. We are sincere, we are committed to work toward a change.

I stated before in the appropriations hearings here a couple of months ago that it is tribal leaders who for the last several years since they opened hearings up to Indian witnesses in 1968 are the ones who have moved the Federal budgets to where they are today. It hasn't been that long ago that we were before the committees supporting BIA budgets and IHS budgets of $200 million, $300 million. And the tribes kind of have to support those budgets because that's where we get our dollars and services. We know where they are at today. We saw graphs here yesterday of where Federal budgets have increased and where the Indian budgets are. But that is just a small part of it. It is the dollars that Congress and the committees have studied and to me it is a shame the amount of dollars that actually get down to our communities. I remember a few years back a study said 16 percent of those dollars and services actually get down to us. When that happens, it is the tribal government and tribal councils that take the brunt of why isn't the United States living up to its responsibility. They take the heaviest brunt. Why do our people have to go to the State? Why do our people have to go here? The tribal governments are the ones who take the brunt of it, Mr. Chairman.

I hope that as we are looking at a new forum, a new initiative for the 1990's, that some of the legislation that we have already passed—and it has been good legislation, good hearings—that we see we can get stronger oversight on getting these regulations developed and seeing that we can get the proper dollar transfers.

Mr. Myers talked about the tribal courts. We were before the appropriations committee last year on a Northwest Inter-tribal Court System. I want to tell you about that court system because it was the tribes on their own initiative back in the early 1970's that saw the needs of the smaller tribes and the larger tribes—I will say larger tribes, although we are not large tribes—out of their timber proceeds, put the money into the Western Washington Agency to start that Inter-Tribal Court System because of the needs of the smaller tribes within the Puget Sound area. From there we began trying to build in the Bureau of budget dollars for that Inter-Tribal Court System, which we were finally able to do. Then we end up administratively every year with those dollars not getting down to those court systems. Last year $259,000 had to be reprogrammed. The appropriations for 1990 for that court system and other courts was $660,000, and we are still trying to get that money out of the Bureau. They are saying we have to write new regulations, we have to do this, we have to do that. They have the authorization.

I am speaking of these things today because it is just so frustrating. I want to thank you for the opportunity to testify here today and for allowing me to express my frustrations.

[Prepared statement of Mr. De La Cruz appears in appendix.]

The **CHAIRMAN**. President De La Cruz, the project you are involved in with nine other tribes is very important to this committee because by your reports we can see most graphically the obstacles that Indian nations constantly face in trying to bring about greater self-determination. Though it may be frustrating, I hope that you will keep up in this project because through this endeavor we will get a clearer picture of what needs to be done to bring about greater self-governance among Indian nations.

I wish to thank you for the work you have been doing, and through you, your colleagues in other Indian nations. Thank you very much.

May I now call on President Thomas.

STATEMENT OF ED THOMAS, PRESIDENT, TLINGIT AND HAIDA CENTRAL COUNCIL, JUNEAU, AK

Mr. **THOMAS**. Good morning, Mr. Chairman, and thanks for the opportunity to provide my testimony to this committee on behalf of my people.

I have also provided some written testimony and I will probably not cover much of that in my oral testimony. However, I want to make it very clear that my comments by not including in my comments these things that it does not diminish the importance of these issues.

I think over time my tribe has been trying very hard to develop partnerships with the Federal Administration so that we can improve the situation of our Indian people within my region. One of the very important questions that I think needs to be asked as we prepared to get into a new decade and indeed is a new era is the question of what can we do jointly together, working with Congress or other branches of Government, to get the Federal Government to live up to or follow existing laws designed to benefit Indian people. Just yesterday in our meeting I heard a report from representatives of the Mohawk Tribe whereby they cited parts of their treaty with the United States dealing with law and order, and asked the Federal Government, through the Office of the President, through the BIA, and other Federal agencies to come in and assist them and to look after that part of the treaty. They still have not gotten a response from our President.

Public Law 93-638 was also designed to turn more of the programs over to the Indian people. In spite of the directives and in spite of the congressional record that accompanied this law, the Bureau has not been forced to reduce its administration. As a result, many of the precious program dollars have been syphoned off to take care of the BIA administrative oversight. The Bureau, at least in my State, has not provided the kind of training and technical assistance that was set forth in the Public Law 93-638 so that it would enhance the process of tribal contracting and self- determination. I cover more of that in my written testimony.

Another example is Public Law 100-472. I, like Mr. De La Cruz here, am concerned about the fact that the regulations have still not been promulgated. Instead, the Bureau has issued interim policies that are even more restrictive than the old Public Law 93-638 administrative policies. An example of that is we tried to get some money reprogrammed, one program had some positions that were not filled, we tried to put those dollars into another program that had a greater need and we were denied because we did not meet some phantom deadline of August 31, which is a no regulation, it is just in the memorandum between the central office and my area office.

To become a mature contractor, they wanted resolutions from every tribe in our region. Little roadblocks of this nature are not just irritating they are very expensive. It takes a lot of time and money to try to mitigate out these problems.

My tribe entered into this Self-Governance program—

The CHAIRMAN. Do you believe that these roadblocks are deliberately put out there to frustrate you?

Mr. THOMAS. Yes; very much so. And I will get into one more example of our inability to even get discretionary grants. We haven't gotten very many, if any, since we got involved in this demonstration program. I am not suggesting that is the only reason, but it certainly does not appear to be consistent with our previous history of getting grants and contracts from the Bureau.

Going back into my reason for getting involved, I was one of those tribes that was involved in the testimony on the House side when the Self-Governance Demonstration Program gained its origin. We got involved primarily because the then Assistant Secretary Swimmer suggested that why don't we get into a new way of making the tribes have more control; instead of the old way of Public Law 93-638, let's give you the total amount of money. He said I would be glad to give you part of my office money, and he stated that I believe in one of the hearings on the Public Law 100-472 process of hearings. Not only that, he went further and issued a directive to all area offices saying give our tribes full cooperation in the development of these demonstration programs so that they can see what happens. We were to report back some of the roadblocks. Well, to date, we still haven't even gotten the budget from our area so that we can make rational decisions as to what the impacts might be on other tribes within our area office even though the language was very explicit in the Congressional Record stating that the administration was directed to provide us not only with that information, but to provide us some directives and some options as to how we can create a component of BIA dollars for my tribe and reduce the impact on other tribes.

I think that what I am stating in these few examples is that as we persist and as we come to hearings of this nature and we go to the administration and we go to your committee and your staff members, we become classified as whiners and troublemakers. That greatly diminishes the integrity of my tribe and the people that I represent. I got involved in these programs to provide better ways of doing business, not to be an obstacle to the administration. I want to make that very clear because I do not come back here just because I love Washington, DC. There is a lot of work to be done in my tribal area. We cannot afford to travel back here with limited resources.

We look to the future and we believe that the initiatives for the future must include an increase of money to important tribal programs and do it somewhat at the expense of reduced BIA administration. I say that because many times when you have so many layers of administration that the paperwork, the arguments within the various layers tend to become the problem. For a lot of good reasons, the public thinks that Indian people get a lot of money because they see the billion dollar budget or whatever. Well, that doesn't get to Indian people. Approximately 20 percent gets to the Indian people. But yet it is very hard to argue against public sentiment when we get such a very small amount of money and we have all these large bureaucracies to deal with. We should be working in tandem with these bureaucracies to create better situations for our people. Instead, we are treated as though we are the enemy. That might be a bit overstated, but not very much in the eyes of some of our people.

My tribe suggests that we be allowed to take our fair share of the area budget and give it to the tribes within my region and let us make our own decisions on these dollars. We have a history of having clear audits; we have not had an odd exception in over 5 years. We have good history of tribal input into our programs. We have well attended annual meetings to talk about our programs and our problems. Our political relationships of course go up and down depending upon how much rhetoric we get from the Bureau in our efforts to try to streamline administration.

The point is I think that my tribe is ready for some new ways of contracting to get the administrative dollars reduced, to try to provide better assistance to our people using those same dollars. As I mentioned, we have been in contracting since 1969, first under the Buy Indian Act and then under Public Law 93-638. We contract with other agencies. We have a good record in contracting with HUD for rehabilitation of some of our older houses. We provide contracts to our people for Jobs Training Partnership Programs [JTPP]. We have a good record in all these arenas and I think we have demonstrated the ability to contract.

In my testimony, I also state that I do not believe that it is time to cut Indian programs at all. As a matter of fact, I think we should increase some of them. I do not believe that this country should try to balance its budget on the backs of the neediest of the needy, and many of our people are. In Alaska it is very expensive for some of our village people to travel to the major cities to get health care. Each year they are having to pay half that fare and in some cases it is over $500. To a family that is on a fixed income, they cannot afford to do it and so they live with their illnesses. I don't see how the conscious of this country can be diminished to the point whereby we cannot be compassionate enough to provide health care to those people who need health care.

In closing, Mr. Chairman, I thank you for this opportunity. I am pleased with the effort in putting forth some initiatives for the 1990's. If there is any way my tribe can be of assistance, we would certainly be happy to discuss that with you. Thank you.

[Prepared statement of Mr. Thomas appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. President.

You mentioned two matters that have concerned me throughout these many months. One, you describe this relationship with which you are made to appear like cry babies and whiners. I hope that my assessment is wrong, but I concur with you that this Government of ours has somehow placed Indian nations in a position where you have to make a choice of being a whiner or cry baby or a docile recipient of handouts. I don't know who is responsible for this but as a result attitudes have developed, stereotypes have developed, and I think we have to break that cycle. And so the work you are doing is extremely important. It is a matter of funding and priorities.

It wasn't too long ago when for 10 solid days the lead story on all of our major networks was the three whales in Alaska. The whole Nation and the world watched these three whales. The President of the United States was televised and got on long distance telephone to call those who were involved to encourage them. We spent millions of dollars in this endeavor. We used sophisticated aircraft to fly in expensive equipment. We spent much money hiring people. I love whales and I think all of us love whales, but while this was going on there were thousands of people nearby that you describe who are not receiving any service whatsoever.

As you know, these villages have community health aides; if they are lucky, they have two. These health aides receive 5 or a maximum of 10 weeks of training, and they are no physicians in these villages because no physician will go out there. These villages are lucky if they have a 1-day visitation by a physician once a year. So in the course of life in these villages, people get sick, get hurt, and they have to depend upon these community health aides; one person or maybe two. We wanted to set aside $1.5 million to set up a sophisticated telecommunications system, something akin to a cmbination television and telefax machine where you can focus a camera and simultaneously transmit a picture of a fracture to Anchorage or a regional health center and the doctor can look at that and send instructions. Well, it was considered too expensive. We spent more than $1.5 million each day taking care of the whales. I want to tell you that we are going to change that.

Thank you.

Mr. THOMAS. Thank you, Mr. Chairman.

The CHAIRMAN. Now may I call upon the chairman of the Hoopa Valley Business Council of California, Dale Risling.

STATEMENT OF DALE RISLING, CHAIRMAN, HOOPA VALLEY BUSINESS COUNCIL, HOOPA, CA

Mr. RISLING. Thank you, Mr. Chairman. I appreciate your providing me the opportunity to testify before the committee here today on the subject of Indian Initiatives of the 1990's.

The subject is of special concern to the Hoopa Tribe since our government just recently been freed from threats of termination through the passage of Public Law 100-580, in which you played an instrumental part. As you know, the Hoopa Tribe is located in the remote mountain areas of California near the Oregon border. We have 90,000 acres of land, mostly timber. Our people believe that life began here. Carbon studies from our ceremonial fire pits date Hoopa existence back 10,000 years.

However, as a result of mistakes of the Federal Government, our reservation has undergone extensive and very expensive litigation. Litigation, including the *Jessie Short* and *Puzz* cases, have been the source of misery, frustration, and destruction of our reservation for over 2½ decades. Since 1963, these cases also spawned over 16 separate law suits involving jurisdiction issues, the exercise of reservation rights, and the use of tribal revenues. The litigation brought our Indian people to very high rates of unemployment and social and economic depression, and deep rooted mistrust of the Federal Government and the courts. Of all of these problems generated by litigation, the most ironic to our tribe was how much control, pain, and suffering could be imposed on our people and tribal government by our trustee, the Federal Government.

During the time of the litigation, the Hoopa Tribe suffered more from the hands of the Federal Government than from any other source. Our tribe experienced a complete takeover of our fisheries by the BIA and an attempt to destroy our ability to exercise our sovereign powers under the Gerrard Plan of 1978, a complete withdrawal and relocation of the northern California BIA from its location on the Hoopa Reservation where it existed for some 120 years without any tribal consultation whatsoever, and, finally, in 1988 the BIA took over all tribal revenues and began spending them for BIA priorities, which is illegal under Federal law.

While on one hand we have discovered how much control the Federal Government can inflict over our tribe and our reservation, on the other hand we have learned to adapt to these obstacles and develop creative solutions to them. During the time that we were embroiled in this litigation, we negotiated with the Federal Government to secure our annual budgets and develop memorandums of understanding so that we could manage our own resources. In 1985, the Hoopa Tribe became the first tribe in California to establish a tribal court and we retook control over our fisheries from the BIA. Ironically, in 1988 we even had to work to reinforce the support of the Federal Government for the passage of the legislative solution to these problems in the Hoopa-Yurok Settlement Act.

While the years of litigation have caused tremendous problems for our people, it also provided us with the reason to truly accept the responsibilities for correcting the problems that we face. Today we are concentrating on the task of reorganizing our tribal government to perform the functions necessary to provide the services to our community and manage our reservation resources. We are developing and will implement a new era for our tribe that will ensure our people that we will not have to suffer as we have in the past. We firmly believe that the only way we can protect our people and our reservation is through the development of a solid governmental structure that can respond to present day challenges.

In preparing for the future we have developed the following initiatives which are above and beyond those other established programs and services that we have. We have restructured our tribal court and police departments to institute clearly defined procedures and laws, including those necessary to implement a policy for separation of powers between the various branches of our tribal government.

In order to assure accountability of the actions of our tribal government, we have initiated the development of a tribal grand jury that will function as a branch of our tribal court. On April 19, we formally enacted a tribal children's code which provides the first tribal forum in California to enforce the Indian Child Welfare Act. To address the concerns of accountability within the operations of our government, we have enacted tribal laws such as budget ordinances, a Legislative Procedures Act, and a revised tribal rights ordinance. We have also established a tribal employment relations office under the TERO Program.

To ensure credibility of our tribal government, we have implemented the primary election process to assure that our council is elected by a clear majority of our membership. In order to ensure the integrity of our enrollment process, we are presently awaiting the approval of the membership of an enrollment ordinance that provides for due process for everyone affected by it. We are also proposing amendments to our constitution that incorporate, among other things, a change in our election date to the same as that of the national elections.

In the areas of natural resource management, we have enacted a tribal conservation trustpass law to deal with illegal use of reservation resources. We are presently developing a comprehensive land management program and environmental review department to enforce our tribal clean water codes.

To address the social and economic problems resulting from the years of litigation, we have consolidated all tribal social services programs so we can provide comprehensive services to our people. We are presently drafting an illegal drug eradication program with the aim of ridding the Hoopa Reservation of illegal drugs within the next 5 years.

Unfortunately, because of the cuts in the Federal funding, we in 1987 lost our areas only hospital. As a result, our emergency patients must now be transported over 60 miles to the nearest emergency facility. We are now working with Senator McCain's staff and Indian Health Service to develop a new and innovative approach to the problems facing small rural health facilities throughout Indian country.

Regarding our economic development ventures, we are currently investigating methods for expanding our timber and fish processing operations so we can employ more Indian people. We are also investigating the possibility of entering into joint business ventures with three different Indian tribes and have purchased interest in an off-reservation bank and we now own controlling interest in a construction company off-reservation.

Thus, we are pursuing all aspects of a complete community. Our approach has been to develop our reservation and tribal Government in a comprehensive manner. As you can see, we have taken the role of providing responsible government to our people very seriously. We have undertaken the Self-Governance Demonstration Project with the same philosophy.

Turning to the new federalism and self-governance issues, we look at both concepts very favorably. As can be expected from our past relationship with the Federal Government, the Hoopa Tribe will implement some type of self-governance or new federalism program with or without these specific proposals. Our tribe simply will not allow us to accept the obstacles, suppression, and paternalism that we have experienced over the last two or three decades. We firmly believe that neither the self-governance or new federalism should be allowed to affect in any way the historic relationship between Indian tribes and the Federal Government. We have treaties and agreements with the Federal Government that will be honored and we will not allow the Federal Government to ignore its responsibilities under those agreements.

In implementing the obligations of those agreements, we believe that there is an opportunity for tribes and the Federal Government to agree on methods of exercising that responsibility. This is where a government-to-government relationship can fully be implemented so as to accomplish the objectives of both governments. In implementing the Self-Governance Project, the Federal Government must recognize tribal governments as full parties in the negotiations. By this we mean that the Federal Government must accept their responsibility in the process in the same manner as the tribes will. The Federal Government must be willing to negotiate in good faith with the tribes so the projects will become assets to the tribes instead of additional liabilities.

At present the Hoopa Tribe administers Public Law 93–638 contracts for about 95 percent of the Federal programs on the Reservation. However, we are also subsidizing every contract with tribal funds in order to fulfill the responsibility for providing sound management. The dilemma for the tribe is whether we are more willing to accept underfunded programs of the tribe to administer or allow the BIA administer programs while ignoring tribal objectives.

We do want to point out that we are very skeptical about the funding allocation process proposed in the new federalism proposal. We are also concerned that the Secretary of Interior's Office will attempt to use this unclear proposal as an obstacle during our negotiations under the Self-Governance Project. Obviously, the new federalism and self-governance concept will require extensive review before they become permanent laws.

In conclusion, we believe that Indian country must be prepared to confront the new challenges of the future. We firmly believe that these challenges can only be overcome with strong, stable tribal governments. We, as today's tribal leaders, must accept the responsibilities of shaping our tribes' governments to overcome these challenges while preserving our distinct tribal philosophies. The Hoopa Tribe stands ready to work with the Federal Government and Congress to develop proposals that further the government-to-government relationship between Indian tribes and the United States.

Thank you, and I would be willing to answer any questions you might have.

[Prepared statement of Mr. Risling appears in appendix.]

The CHAIRMAN. Thank you very much, Chairman Risling.

I thank you for your very encouraging and shall I say inspiring report because it shows that notwithstanding obstacles your tribe has been willing to take innovative steps and initiatives which I think should be shared with other tribes.

I was especially pleased to learn of your decision to change your election date to coincide with that of the national election date. I would hope that all tribes would consider that seriously, and politicians may begin to take you seriously. In Indian country, most tribes have their tribal election dates during the spring time or the summer and the turnout from what I gather is about 85 percent. But in the November elections, the turnout averages less than 10 percent. If your politicians in that area note that your turnout in the November elections is about 85 percent, they will begin campaigning in your reservations and making promises. Right now, I am sorry to say, most politicians ignore reservations. Here is an opportunity to change that.

Before I call upon the next witness—and I wish to do so while you are all here—because of the interest shown by the forum in the new federalism concept, which was introduced and propounded by the chairman of the Special Committee on Investigations of the Select Committee on Indian Affairs, Senator DeConcini, I have instructed my staff to begin formulating plans to conduct regional hearings. We have not decided upon the hearing dates, but it will have to come at the earliest after the November elections because my schedule up until that day has been completed and I have no weekends available.

Second, we would like to confer with Indian leaders in determining where these hearings should be held. We want to make it as convenient as possible for the tribes and nations in each region. And so you will be receiving calls from my staff in working out these details. I would hope that these hearings will be concluded by early spring, which should give this committee an opportunity to if at all possible act upon this concept.

I am not fully wedded to the new federalism concept as of this moment. I think there are questions that must be answered because like many programs, if there are funds involved, there are also strings. The question here is are these strings strong enough to tie you up? We don't want in any way to adopt an arrangement whereby we find that the treaties and agreements of the past may be abrogated. So I look forward to these hearings to receive your thoughts and your views on the new federalism concept and I would hope that you would prepare yourselves in sharing your wisdom with this committee.

With that, I thank all of you for sharing your words with us, your wise words, and I can assure you that we will take them seriously and act upon them.

Thank you.

Mr. RISLING. Thank you, Mr. Chairman.

The CHAIRMAN. At this point, without objection, we will include in the record written testimony of Wayne Ducheneaux, Chairman, Cheyenne River Sioux Tribe; and that of Ron Solimon, Chief Executive Officer, Laguna Industries of Laguna Pueblo.

[Prepared statements of Mr. Ducheneaux and Mr. Solimon appear in appendix.]

The CHAIRMAN. Now may I call upon a very distinguished scholar who presently serves as the president of one of our major universities, George Washington University, located in Washington, DC. This witness will share with us an idea which I think has great potential and great promise to Indian country. May I present and call upon Dr. Stephen J. Trachtenberg, president, George Washington University.

STATEMENT OF STEPHEN JOEL TRACHTENBERG, PRESIDENT, GEORGE WASHINGTON UNIVERSITY, WASHINGTON, DC

Mr. **Trachtenberg**. Good morning, Mr. Chairman. It is an honor to be here. If I had any doubt whatsoever about the testimony I am about to give, it was totally erased as I sat here this morning listening to the remarks of those who preceded me before your committee. I think the issues that they raised and the concerns that they expressed will potentially be at least partially resolved if we are successful in proceeding with the initiatives that I would like to speak to this morning.

Mr. Chairman, university programs and centers for the study of native American life exist in many parts of the country, but none exists here in the Nation's Capital where so many important decisions affecting the future of native American people are made. It is for this reason that The George Washington University has determined to seek an opportunity to contribute to native American endeavors in this, our capital city, and as a result of those contributions, hopefully to have a positive impact from coast to coast.

Washington, DC increasingly offers an impressive collection of resources related to this subject. These include, for example, this very committee and its staff, the various Federal agencies concerned with Indian affairs, the National Archives, and the National Museum of the American Indian, among others. Moreover, Washington offers the opportunity to develop a national center for native American studies and policy development that would be different in its focus from centers in other parts of the country and which would work in a complementary and supportive role with these other programs.

The George Washington University is considering the establishment of a national center for native American studies and policy development to provide an objective and scholarly resource for the study of national policy issues related to native Americans. We would also hope to design educational programs to provide training in government for tribal leaders to give them access to skills useful both at home and in their representative roles with the Federal Government.

These are broad purposes that can only be served by an academic and degree-granting institution of higher learning here, in our Nation's Capital. The George Washington University has an excellent law school, a medical center, a public administration program, programs in health administration, programs in other fields related to native American interests, and faculty in a variety of disciplines and expertise in policy studies. We believe our unique qualifications to undertake the establishment of such a center give us a responsibility to seriously explore that possibility.

It is, of course, impossible to fully outline the scope of the national center's work prior to a full study which must, if it is to succeed, involve members of the native American community. Some preliminary discussions have suggested the need for a program, for example, in our law school that might offer a Master's degree in law with a specialty in native American law to native American and other students. These students could serve internships in the Federal Government, indeed possibly even with this committee, while attending George Washington University and subsequently return to their own communities with an enhanced ability to work on behalf of native American concerns with the Government in Washington.

Others have suggested the need for the Congress and agencies to have available the objective research findings of university scholars when considering policy initiatives. Learned testimony before this committee in the past has mentioned the need for a national clearinghouse for historical data regarding native Americans and a resource of expert help to assist tribes seeking to document their histories. Perhaps this is another role which, by virtue of its location in Washington, the national center would be uniquely suited to play. We would expect that the national center would establish relationships with Indian colleges and other native American studies centers in other parts of the country, serving and assisting them with regard to the resources they need and which are available only in the Nation's Capital.

Again, these are ideas that have been suggested in preliminary discussions, and I wouldn't want to prejudge which of these specific efforts the national center should undertake. Indeed, it might undertake them all. These determinations will require planning and discussion, and it is absolutely essential that native American leaders be deeply involved in those discussions.

In order to explore this concept further will require an appropriation, it has been suggested, of $1 million to support the study. The university would employ as study director a person of considerable experience in native American matters. We are already in the process of developing an advisory board, comprised of native Americans, and we will need resources in order to bring these people to Washington to participate in discussions. It is essential that the study be thorough, and our hope would be to complete it and report back within 1 year to 1½ years.

Mr. Chairman, I am convinced that there is a great need for the national center for native American studies and policy development, located right here in Washington, DC, where decisions affecting the life of native Americans are made every day, as we can see by the proceedings here today. Establishment of this center can bring native Americans and their concerns right here into the daily working life of the Federal Government in a new way and contribute to the formulation of effective national policy in this area.

Mr. Chairman, I thank you and your colleagues for the opportunity to present this testimony to the committee today.

The CHAIRMAN. Thank you very much, Dr. Trachtenberg.

As those of you gathered here must have sensed, this initiative that Dr. Trachtenberg has just described is in response to the suggestions and pleas that we have heard from tribal leaders throughout this land saying that we need the development of human resources, the skills that are necessary for governance, the skills that are necessary for a judicial system, the skills that are necessary for the maintenance of law and order. We are hoping that with your help this Center can be developed. We in the Congress are doing our part and I believe have done our part.

It was 10 days ago this Senate passed a bill authorizing a feasibility study to be conducted regarding the establishment of this center and authorizing the expenditure of $1 million to that end. Yesterday, the House passed this bill and it is now on its way to the White House. I hope the President will see the wisdom of this measure and sign the bill. Upon signing of this measure, I will, as a member of the Appropriations Committee, make every effort to see that the moneys authorized will be appropriated in this coming fiscal year. So this is just another example of the committee eagerly awaiting your suggestions and acting upon them.

Dr. Trachtenberg, we are pleased to have had the opportunity of working with you all these months and especially pleased to know that the first big step has been taken. We look forward to the establishment of the center for Indian policy studies and resource development.

Thank you very much.

Mr. **Trachtenberg**. Thank you very much, Mr. Chairman.

The **Chairman**. With that, I close this hearing with the deep gratitude of the Select Committee on Indian Affairs and with the promise that we will study your proposals with extraordinary care. And just watch us, we will carry out your orders.

Thank you.

[Whereupon, at 11:34 a.m., the committee was adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

PREPARED STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA, VICE CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

I AM PLEASED TO BE HERE WITH YOU TODAY FOR THIS IMPORTANT HEARING. I WANT TO COMMEND YOU FOR YOUR LEADERSHIP IN INITIATING A DIALOGUE WITH TRIBAL LEADERS AIMED AT ESTABLISHING A TEN-YEAR AGENDA FOR INDIAN POLICY. I ALSO WANT TO COMMEND AND CONGRATULATE YOU FOR YOUR EFFORTS TO ESTABLISH A NATIONAL CENTER FOR NATIVE AMERICAN STUDIES AND POLICY DEVELOPMENT IN COOPERATION WITH THE ADMINISTRATION ON NATIVE AMERICANS. I BELIEVE THAT SUCH A CENTER WILL PROVE TO BE INVALUABLE TO TRIBAL AND FEDERAL OFFICIALS IN THE FORMULATION OF WORKABLE POLICIES.

MR. CHAIRMAN, THERE IS NO DOUBT THAT THE BEST SOLUTIONS TO THE DIFFICULT ISSUES FACING INDIAN COUNTRY WILL BE THOSE WHICH ARE DEVELOPED BY THE INDIAN PEOPLE THEMSELVES. WE ALL KNOW THAT MANY OF THE PROBLEMS IN INDIAN COUNTRY ARE A RESULT OF PAST INCONSISTENT FEDERAL POLICIES, MOST OF WHICH WERE SIMPLY

IMPOSED BY THE FEDERAL GOVERNMENT. I AM DELIGHTED THAT WE ARE TAKING THE TIME TO WORK CLOSELY WITH TRIBAL LEADERS TO DEVELOP AND RECEIVE THEIR RECOMMENDATIONS FOR CHANGES IN FEDERAL POLICY.

IN EVERY AREA OF ENDEAVOR, WHETHER IT BE HEALTH, EDUCATION, CULTURE, ECONOMIC DEVELOPMENT OR GOVERNANCE THERE IS NO DOUBT THAT SOME PROGRESS HAS BEEN MADE DURING THE PAST THIRTY YEARS. THERE IS ALSO NO DOUBT THAT MUCH MORE MUST BE DONE. FOR EXAMPLE, WHILE WE CAN ALL POINT WITH PRIDE TO THE ACCOMPLISHMENTS AND CONTRIBUTIONS OF TRIBALLY CONTROLLED COLLEGES, WE HAVE GENERALLY NOT BEEN ABLE TO PROVIDE ADEQUATE ELEMENTARY AND SECONDARY EDUCATION OPPORTUNITIES TO INDIAN AND NATIVE PEOPLE. WHILE THERE ARE MANY EXAMPLES OF SUCCESSFUL BUSINESS AND ECONOMIC ACTIVITIES IN INDIAN COUNTRY, UNEMPLOYMENT ON MOST RESERVATIONS CONTINUES IN THE SEVENTY TO NINETY PERCENT RANGE. WHILE GREAT STRIDES HAVE BEEN MADE IN SOME ASPECTS OF HEALTH CARE AND DISEASE PREVENTION, INDIAN AND NATIVE PEOPLE CONTINUE TO BE AT EXCEPTIONALLY HIGH RISK FOR MANY DISEASES AND DISORDERS. TRIBAL GOVERNMENTS HAVE GENERALLY GROWN IN CAPACITY UNDER THE SELF-DETERMINATION POLICY, BUT MANY CONTINUE TO SUFFER FROM THE LACK OF TRAINED PROFESSIONAL STAFF.

THESE ARE BUT A FEW EXAMPLES OF THE PROGRESS THAT HAS BEEN MADE AND THE CHALLENGES WHICH LIE AHEAD. FOR US HERE IN THE CONGRESS THE BIGGEST CHALLENGE IS TO IDENTIFY POLICIES AND PROGRAMS WHICH WILL EMPOWER THE TRIBES TO BUILD ON THE PROGRESS OF THE LAST THIRTY YEARS. I BELIEVE THAT THIS HEARING WILL YIELD SOME VALUABLE IDEAS ON HOW WE CAN PROCEED.

THANK YOU.

TESTIMONY OF MICHAEL T. PABLO

TRIBAL COUNCIL CHAIRMAN

Mr. Chairman, members of the Senate Select Committee on Indian Affairs, the Confederated Salish and Kootenai Tribes of the Flathead Nation are sincerely appreciative of the opportunity to testify before the Committee on the subject of "Tribal Initiatives for the 1990s".

From the perspective of the Salish and Kootenai Tribes what we are really here to address is the vision of how Tribal governments and the people they have responsibility to, fit into the fabric of American society. This fitting-in must be done from the basic premise that Tribes are committed to self-governance, and to following and developing their unique Tribal cultures. These are not to be taken as abstract principles, they are very real in the minds and actions of Indian people. The fulfillment of these concepts has often brought Tribes into direct conflict with the policies and laws of the federal government and with state and local governments.

These confrontations have been largely, if not exclusively brought about because of some major pieces of federal legislation and some significant Supreme Court decisions which have been antagonistic to tribal governance. After committing itself through the use of its treaty making authority under the United States Constitution, to conduct its affairs with Indian people as independent sovereign nations, the Congressional and the Executive branches of the United States dramatically changed this nation-to-nation relationship with the passage of the 1887 Allotment Act. This legislative action profoundly altered the ability of those Tribal Nations, who were subject to the Act, to meaningfully control and govern the lands and people within their geo-political boundaries. For with the Allotment Act the United States permitted non-Indians to move onto the reservations and occupy so called "surplus lands". Over the ensuing years this resulted in dramatic changes in the demographics and land ownership patterns on Indian Reservations.

Many of the non-Indians now living on the reservations view tribal governments as alien to them and as a consequence do not accept the authority of Tribal governments. In an effort to involve all reservation residents in matters effecting them the Salish and Kootenai Tribes continually hold public meetings that provide the opportunity for Indians and non-Indians alike to comment on pending tribal governmental actions including proposed legislation and regulations. The Tribes also meet with community leaders and educators for the purpose of discussing reservation goals and policies.

Despite the fact that the Tribal government makes this public comment effort, it has had to litigate in federal court it's authority to regulate the activities of non-members. We have been forced to continually litigate jurisdiction over matters which were reserved in our Treaty with the United States. However, once the authority to regulate non-member activities is judicially established the actual regulatory implementation of tne law is not as difficult as re-establishing that authority.

The 1887 Allotment Act continues to be cited by the federal courts for the proposition that Tribal authority over such lands and non-members who subsequently obtained ownership of such is either limited or totally lacking. The 1934 Indian Reorganization Act, while repudiating the policy of the 1887 Act, has been construed by the federal courts as not having fully eliminated all provisions of that Act. Because of these judicial interpretations Congress needs to enact further legislation which completely does away with any remaining residue of the 1887 Act.

Coupled with this problem has been the recognition by the courts that state taxation of the non-Indian activities on the Reservation co-exists with Tribal authority to tax the same activity. This serves to discourage non-Indian investment on the Reservation and creates animosity towards the Tribes from those taxpayers already on the Reservation who have to pay both taxes. Like other governments, Tribes need taxation revenue to provide essential services and to be able to expand those services. This dual taxation problem discourages economic development on the Reservation and in so doing perpetuates the cycle of poverty.

The Salish and Kootenai Tribes have not, to date, imposed any direct taxes on their membership nor on non-members within the Reservation. They have not had to do so because they have been able to use revenues generated from the sale of their natural resources. Ultimately, the day will come when the Tribes will have to consider some form of taxation.

Congress needs to enact legislation which relieves taxpayers of this double taxation burden while still preserving Tribal taxing authority.

The second significant piece of federal legislation is Public Law 280. This Act permitted the concurrent exercise of jurisdiction over certain enumerated subjects by Tribal and state governments. The necessity for the concurrent exercise of such authority is no longer as pressing as it once was. Some Tribal governments, especially at Salish and Kootenai, have sophisticated judicial systems and well-trained police forces. However, retrocession under P.L. 280 of concurrent jurisdiction is so cumbersome that it is extremely difficult to do so. Public Law 280 needs to be amended so that this retrocession procedure is easier to accomplish. Under the exercise of concurrent jurisdiction, tribal members receive disparate treatment under the criminal justice system of the state. For example members of the Salish and Kootenai Tribes have a disproportionate number of inmates in the state penal system when compared with the population of the state and that of the Reservation.

In the judicial arena, United States Supreme Court decisions which have damaged the pursuit of Tribal self-governance include, but are not limited to Oliphant v. Suquamish Tribe, Brendale v. Yakima Indian Nation, the Cotton Petroleum decision, and U.S. v. Montana. Recent decisions such as National Cemetery Association v. Lyng are quite detrimental to the practice of religious freedom and preservation of the culture of our people. While it may be difficult, the Congress needs to seriously examine overturning or rectifying the effects of these decisions.

With changes in these areas of the law the United States will be greatly assisting Indian Tribes by providing pieces of the framework necessary for self-governance. While we recognize that this process will not be as smooth as we would all like it to be, it is nonetheless the right process. The policy of outright termination of Indian reservations or that of piecemeal evisceration of Tribal governmental authority has only created more problems than it tried to solve.

The Confederated Salish and Kootenai Tribes have a vital and functioning government and like other Tribal governments is committed to improving that government for the betterment of the reservation. In so doing, it is also for the betterment of the United States. It is in the self-interest of the Unites States that Tribal governments and reservation economies are strengthened and improved by positive federal legislation.

The Confederated Salish and Kootenai Tribes have been able, despite the obstacles pointed out here, to develop a strong stable government. This has happened primarily because of consistent leadership. Members of the Council are elected for four year terms and re-election is on a staggered term basis. Because of stable leadership, the establishment of a civil service and a record keeping system was made possible. With this civil service the Tribal leadership has been able to implement it's legislative policies. In addition to the civil service, the Council promoted the development of a strong judiciary.

With these three key elements in place, the Tribal government has begun to effectively manage the natural resources on the reservation. It has also started to examine and hopefully rectify the significant health care and social service needs of the reservation residents. As with other governments, the processes followed by Confederated Salish and Kootenai Tribes are in a dynamic state. The Tribal Council is also highly committed to the education of the people of the reservation. In meeting this commitment it established the Confederated Salish and Kootenai College and an alternative high school (Two Eagle River) for the purpose of meeting the needs of those students which were not being met by the public school system.

In addition, to these types of governmental functions, the Tribal Council has actively promoted economic development. It has done this by creating Tribally owned businesses - a post and pole enterprise with a small sawmill and an electronics assembly plant. The Tribes have also entered into a joint venture with non-tribal members to develop a destination resort on the reservation. This particular project is well on the way to becoming a reality. This project has fostered considerable goodwill within the non-Indian business community.

Congress could further assist in this area by amending the Small Business Administration Act in order for Tribal and Indian owned businesses to more readily qualify for "8(a)" status. Currently, the Small Business Administration makes qualifying for "8(a)" status of Tribally owned business nearly impossible.

Besides the promoting of tribally owned businesses, the Tribal government through it's revolving credit-loan program has assisted in the financing of individual members' businesses. Also, the Council is just now starting to explore the possibility of establishing a credit union for it's several hundred employees.

Pursuant to a contract under Public Law 93-638 the Tribal government is managing the local electrical utility. The Tribes are also a co-licensee with the Montana Power Company for the operation of a 180 megawatt hydroelectric facility. The Tribes are now laying the ground work for their management of this facility which will commence in the year of 2015.

Of no less significant importance with respect to the other matters discussed in this testimony, the Tribes are actively involved in preserving Tribal culture. To accomplish this effort the Tribes have two very active culture committees. It is through activities sponsored and carried out by these two committees that Tribal cultural programs are fulfilled. In preserving Tribal culture, the two committees must reach beyond reservation boundaries to aboriginal lands. This has necessitated the need for the development of a working relationship with representatives of the National Forest Service, the Corp of Engineers and with other federal and state agencies.

As you can see the Tribes have not stood still waiting for Congress to change old laws that have created obstacles and in some cases outright barriers to Tribal self-government. We strongly encourage Congress to consider changing the policies and laws we have referenced in this testimony. We also encourage this

Committee to continue to follow the course it has been tracking under the leadership of Senators Inouye and McCain.

With regard to legislation now before the Congress, the Confederated Salish and Kootenai Tribes are in favor of those particular bills which, if enacted, will be of substantial assistance in the next decade. One of these is the Indian Development Finance Corporation Act, it contains the kinds of financing concepts that will be extremely helpful in developing reservation economies. We strongly support the McCain and Domenici economic development bills that are pending before the Finance Committee. Also, the National Indian Forest and Woodland Enhancement Act, for Tribes, like Salish and Kootenai, with commercial timber lands will when enacted provide improved management of Tribal forest lands.

Since Tribal Culture and religion are so inextricably woven together the Salish and Kootenai Tribes, also support legislation now pending in Congress which will allow for the free exercise of religion and the repatriation of skeletal remains and sacred objects.

The Confederated Salish and Kootenai Tribes will continue to actively participate in this national legislative process and gratefully appreciate the efforts of this Committee in pursuing legislation which strengthens Tribal self-government.

Quinault Indian Nation
POST OFFICE BOX 189 □ TAHOLAH, WASHINGTON 98587 □ TELEPHONE (206) 276-8211

TESTIMONY OF JOSEPH B. DELACRUZ
PRESIDENT, QUINAULT INDIAN NATION
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
HEARING ON
TRIBAL INITIATIVES FOR THE 1990'S
MAY 11, 1990

Chairman Inouye and members of the Senate Select Committee on Indian Affairs. I appreciate the opportunity to present my views on Tribal Initiatives for the 1990's, particularly related to the evolving Self-Governance concept.

The Senate Select Committee on Indian Affairs provided for the authorization of the Self-Governance Demonstration Project in Title III of Public Law 100-472, the "Indian Self- Determination Act Amendments of 1988." Senator Inouye remarked at the close of a rather extensive hearing by this Committee on the Self-Governance Demonstration Project provision that he did not know if this project would work, that it might fail, but that we needed to try something different.

Basically, the Self-Governance Demonstration Project is to provide participating Tribal governments the opportunity to exercise greater control over our affairs and governmental responsibilities. The Project, limited to twenty Tribal governments, authorizes a two year planning phase and three year demonstration period.

The first two years of the Self-Governance Demonstration Project are devoted to research and planning by the participating tribes. Each Tribe is developing a proposal for assuming control of the programs, services, functions and management duties related to its reservation that are now held by the BIA. The BIA, in turn, is to be researching its own budgets and services for the transfer of resources to the Tribes.

Once the two-year planning phase is completed, each of the participating tribes that wishes to continue in the program may enter into negotiations with the federal government. These negotiations will determine the specific responsibilities the tribe will assume during the demonstration period, as well as the terms and timetable of the transfer of resources to the Tribes.

Some tribes may assume only a portion of the programs, services, functions and management duties currently managed by the BIA. Others may wish to assume every BIA responsibility, in order to become more self-sufficient and self-governing. The degree of self-management will be determined by agreements negotiated between each Tribe and the federal government. Regardless of the transfer of management and financial responsibility, the BIA would continue to provide protection of the basic treaty rights as a means of trust responsibility for every Tribe throughout the Project.

I have enclosed for the hearing record a copy of a "Red Paper" prepared by the Quinault Nation, Lummi Indian Tribe, and Jamestown Klallam Tribe entitled:

Shaping Our Own Future - The Promise of Tribal Self-Governance. We published this "Red Paper" to educate our own Tribal membership and other interested Tribal leaders on the legislative provisions, historical perspective, and planned implementation of the Self-Governance Demonstration Project.

After two planning years, the Quinault Nation is prepared to negotiate a Self-Governance Compact/Agreement with the Interior Department. Despite a non-cooperative BIA, the Self-Governance Demonstration Tribes are proceeding with the Project. The Self-Governance Demonstration Project, as designed by Congress and the participating Tribal governments, is to transfer BIA resources to the Tribes in lieu of Federal services allowing the Tribal governments to manage their appropriations without Bureau regulatory instructions. The Demonstration Project is to last three years in order to serve as a pre-test of the concepts, hopefully leading to future Congressional authorization.

The BIA, unfortunately but to no one's surprise, has been unwilling, to date, to initiate the necessary budget research and resource transfer proposals for the negotiations. One of our concerns is that last minute proposals by the BIA will create administrative chaos and inter-Tribal disputes, particularly in Multi-Tribe Agencies. It will be a test of wills in the next several months between an entrenched bureaucracy and Tribes seeking greater independence to manage their own affairs.

In a speech last year to the D'Arcy McNickle Center for the History of the American Indian Conference, I asserted that:

> No right is more sacred to a nation, to a people, than the right to freely determine its social, economic, political and cultural future without external interference. The fullest expression of this right occurs when a nation freely governs itself...We call the exercise of this right Self-Determination. The practice of this right is Self-Government.

I am not suggesting that Self-Governance is the comprehensive answer to all the problems confronting Indian Country. It is, however, the next logical step beyond Self-Determination contracting, to enable tribes to once again manage their own affairs and to control their own destinies.

The Self-Governance Demonstration Project has been a controversial development in Indian Country. Many opponents and detractors have emerged including those with special interests in maintaining a status quo in Indian Affairs. We have prevailed so far and hopefully will proceed successfully in the project implementation to prove the competence of Tribal decision-making and management. And, Indian people will view their reality from a new perspective.

In November, 1989, the Special Committee on Investigations of the Senate Select Committee on Indian Affairs released their Final Report entitled: New Federalism for American Indians. The report recommends a future transfer of a majority of Federal bureaucracy resources to the Tribes. Suddenly, the Self-Governance Demonstration Project looks modest in comparison to this comprehensive recommendation. And most recently, Senators McCain, Daschle and DeConcini introduced S.2512, the "New Federalism for American Indian Act of 1990." In his introductory remarks, Senate McCain indicated that this new legislation will be debated for months, possibly years. I welcome the debate and challenge as Indian Country thinks in new ways about sovereignty and survival.

It is important to, however, point out that although they are related, Self-Governance is a separate and district concept from the New Federalism recommendations contained in S.2512. The success or failure of the Self-Governance experiment should be followed closely as the debate on New Federalism proceeds.

I believe our future progress will depend principally on the advancement of "government-to-government" relationships and the consolidation of Federal programs under Tribal control. As Tribal governments in the Pacific Northwest, we successfully participated in the creation of the U.S.-Canada Pacific Salmon Treaty and are integrally involved with three States, the United States and Canada in implementing the treaty provision. Last year, the twenty-six Tribes in Washington State negotiated and signed a Tribal-State Compact on government-to-government relations. These twenty-six Tribes currently participate in a Timber-Fish-Wildlife agreement with the State of Washington and Timber companies to collectively manage commercial timber harvests and protect wildlife habitats. I just left a meeting in Washington State involving leaders from counties, municipalities, industries, environmental groups and Indian Tribes collectively debating the future of Washington State water. We are recognized, we are negotiating, we are participating as sovereign governments with our neighboring governments.

The Congressional commitment to the Tribes and their treaties has made our participation possible. We will need Federal assistance to maintain and expand government-to-government relationships. These government-to-government communications, negotiations, commitments, and partnerships are an essential element in the achievement of Self-Government.

With your leadership, it will be necessary for Congress and the Federal bureaucracies to alter past perceptions of Tribes as wards of the BIA and IHS to a working recognition of Tribes as sovereign governments. Examples abound of authorization legislation simply ignoring the existence of Tribal governments with the standard definition of governments as "State and local units of government and the Trust Territories." The Federal bureaucracies, in turn, absolve themselves of any responsibility to Tribal governments. And thus, legitimate Tribal needs are left unaddressed. For instance, the

National Institute on Drug Abuse spends no resources on Tribes and the National Institute of Mental Health only provides minimal assistance for demonstration initiatives. The Quinault Nation has jurisdiction over twenty-seven miles of Pacific Ocean beaches, yet we receive no assistance from the Coastal Zone Management Act. Tribal loans from the Small Business Administrative are a laughable sham. The Environmental Protection Agency with its $5.6 billion FY91 budget still refuses to recognize that Tribes have jurisdiction over fifty-two million acres of land. These are but cursory examples. My point is that Tribal governments need to be included in these future authorization definitions by Congress and Federal agencies needs to recognize their responsibilities to Tribal governments.

The American people need to comprehend the fact that Tribal governments have a legitimate role in America's present and future destiny. We are not simply vestiges of a historical past or an abbreviation in America's political system. Many Americans believe the ultimate destiny of the American Indian is to be absorbed into the mainstream of modern society. I believe the progress and survival of American Indian Tribes in the next century will be an example to the rest of mankind that the United States does respect its own and treaty commitments.

For a select group of politicians and developers, our presence and treaty rights appear to inhibit planned developments. Through public education and government-to-government interactions at the State and regional levels, I am hopeful that our role and place on the American social, political, and economic landscape will be understood, and ultimately appreciated. It will take time, patience, and perseverance for this vision to become a reality. Congress through its legislative directives and the Federal bureaucracy, enlightened by these directives and an improved awareness of Indian Country realities, could be most helpful in this educational process.

I believe that Tribal government control and management of the programs and services offered for their people will dramatically improve the negative statistics so prevalent in our Tribes. The Self-Governance Demonstration Project, however, has been a most instructive experience for myself and the Quinault people during these last two planning years. Years of repetitive Self-Determination contract management by Tribal staff in response to BIA directives have created resistance to change. The BIA rules and regulations, although prohibitively restrictive, have become the pervasive and safe answers in the decision-making process. Contract financial and operative limitations, often absurd in their application, have served as guidance. And the very concept that the Quinault Business Committee and Quinault people will manage their own affairs has been troublesome for many who have relied on the BIA.

During the two Self-Governance planning years, we have held numerous community meetings to discuss the Self-Governance concept and its implications. We have reviewed or Tribal administrative structure, responsive predominantly to grant/contract administration, to determine more efficient administrative processes. The decision-making and oversight of the Quinault Business Committee will have to be changed to manage federal financial transfers more effectively according to Tribal competing priorities. We, the Quinault Nation, will be responsible in the implementation phase of this demonstration for our problems and achievements. This new reality for the Quinault Nation will place full responsibility for consequences on the Business Committee and Tribal administrators.

The Quinault Indian Nation, similar to most Tribal governments, does not possess a great depth of sophisticated administrators among its personnel cadre. We have a mixture of experienced Indian and non-Indian technicians to manage the Tribal administrative requirements. Although the number of Quinault youth completing high school and attending college has increased over the last two decades, we have not had the resources to employ many of those who have returned. We expect the Self-Governance Demonstration Project and future incremental transfers of Tribal control over IHS and other Federal programs will provide the employment opportunities and careers for these young Quinaults.

Tribal government operations are indeed unique due to our treaties and Tribal status, the management of natural resources and the development of our economies, the provision of social and health services, and the myriad daily challenges of Tribal progress. I certainly support and endorse the recent provision in S.1346 by Senator Inouye to conduct a feasibility study by the

George Washington University for the establishment of a National Center for Native American Studies and Policy Development. This National Center could be most beneficial under Tribal leadership guidance in providing basic instruction in Tribal policy and management to Tribal policy leaders and administrative staff. Potentially, regional satellite centers could reach an even broader Tribal audience. Tribal government development could rely heavily in the future on the curriculum and research conclusions of such a Center.

I envision the next decade will shift the emphasis in Indian Affairs from Federal bureaucracies determining priorities and directing service delivery to Indian people to a Tribally-directed development and service delivery. I believe the Self-Governance Demonstration Project is an important step in this direction. In the reauthorization of the Self-Governance Demonstration Initiative, I would hope the Project could expand to both encompass the Indian Health Service and offer the participation opportunity to many more Tribal governments, I caution, however, that this shift to Tribal Self-Governance be incremental and available to those Tribes who choose to participate. This transition period should also maintain a bureaucracy for those Tribes who wish to maintain their established relationships. As I've stated, the most difficult part of Self-Governance will be the logical, orderly reduction of the entrenched bureaucracy to transfer these Federal resources to Tribal control.

I appreciate the opportunity to present my views representing the Quinault Indian Nation at this hearing on "Initiatives for the 1990's." The ensuing years will be exciting and challenging. I look forward to working with Congress in the achievement of Self-Government.

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CENTRAL COUNCIL
tlingit and haida indian tribes of alaska
320 West Willoughby Avenue • Suite 300
Juneau, Alaska 99801

Testimony of Edward K. Thomas, President
Central Council of Tlingit and Haida
Indian Tribes of Alaska
Before
The Senate Select Committee on Indian Affairs

Tribal Initiatives for the 1990's

My name is Edward K. Thomas. I am the elected President of the Central Council of the Tlingit and Haida Indian Tribes of Alaska.

I am honored to be here today to share with you "an Alaska Native" perspective for the 1990's and beyond. I have divided my testimony into five (5) parts: Tribal Recognition, Funding, BIA Program Management, Subsistence, and PL 100-472.

Tribal Recognition:

It pains me a great deal to report that Alaska Native Tribes continue to face a clear threat of termination. This threat results in large part from the federal government's failure to provide clear support to and recognition of Alaska tribal governments, despite the fact that numerous Acts of Congress and federal court decisions have reinforced the sovereign status of tribal governments in Alaska.

Alaska Natives have had to prove tribal status in order to sue the United States under "Indian" laws. It was these lawsuits which led to the Alaska Native Claims Settlement Act (ANCSA). Neither, this Act, nor any other Act, extinguished any tribal sovereign rights of any of our tribes nor have any Acts of Congress reduced the relationships of our tribes to the United States, as tribes.

Supreme Court rulings have made it clear that tribes maintain the full powers of self-government until extinguished through explicit Acts of Congress. Since Congress has not explicitly extinguished the governmental rights of Alaska tribes, I request the support of Congress in suppressing those activities of the federal and state governments and their agents which now challenge the status of Alaska's sovereign tribes.

Funding:

Indirect Costs - Tribal contractors are still not receiving their fair share of what the government pays to have tribes manage federal programs. Every federal agency must be required to pay its fair share of tribal administrative and indirect costs as determined by the Inspector General or other offices or officers responsible for auditing tribal operations and determining indirect cost rates.

Indian Health Service - Alaska Natives have, for decades, been provided inadequate health care through IHS. The non-administrative part of Alaska's IHS budget needs to double over the next several years to meet the current needs of our needy tribal members. Mortality rates of our people under the age of 40 is significantly higher than the national average.

104(a) Grants - It is critical for Alaska's small (and large) tribes that 104(a) grants be reinstated at the 1980 level. These funds not only provide the only means for these tribes to conduct business, they also attract other funds.

Training and Technical Assistance - Alaska's Juneau Area Office of the Bureau of Indian Affairs has spent over $1,000,000 per year in training and technical assistance funds for its own administrative functions rather than for tribal government enhancement for which it was appropriated. Appropriations language needs to direct the BIA to make these funds available to tribes with a minimum of red tape, and NO red tape for tribes under 200 members. Any unused T&TA money must be given to tribal contractors for other programs.

Indian Child Welfare Act (ICWA) - Indian children are being placed in non-Indian homes because tribal social workers do not have the resources to properly intervene on behalf of Indian families. Congress must dramatically increase funding for ICWA and discontinue ICWA awards on a "competitive" grants basis.

General Assistance - State wealth resulting from oil levies has gone to the well-off and to capital projects, very little of this wealth has gone to the needy or minority groups. Expected benefits from the Alaska Native Claims Settlement Act never came at all. Instead, these precious resources were used up by lawyers and consultants to litigate right-of-ways and easements, litigate ambiguities in the law, and to develope business structures which were and are, foreign to a subsistence society. Our Native people are eligible for, and need, BIA general assistance help. Not everybody, but many of our people have no place to turn. Suicide rates in some communities in Alaska are nearly 14 times the national average. Although not all suicides are attributable to the absence of monetary help, too many are.

Realty/ANILCA - It is a national shame that less than one-half of Native allotments applied for before 1920 in Alaska have been certified. Money to get this done must be tripled for the next 10 years so that this may be done once and for all. If this is done in this fashion, money will actually be saved and the work will be done. The BIA should be prohibited from taking any funds designated for this purpose for their administrative functions.

Indian Priority System (IPS) - This process should be fully funded and the BIA should be directed to adhere to tribal input after full review of the entire BIA Area budgets.

I strongly object to further cuts in Indian program budgets. In fact, I request increases. The Nation's budget **MUST NOT BE BALANCED UPON THE BACKS OF THE NEEDIEST OF THE NEEDY!**

BIA Program Management - While methods for providing services to tribes have changed dramatically over the past 15 years, the BIA is using administrative systems and staffing patterns that are over 20 years old. My Tribe proposes that we, in Southeast Alaska, be allowed to take 20.79% (our percentage of the Alaska Native population) of the BIA Area budget and convert these funds into programs that our people themselves determine are best for them.

I am in favor of many of the points made concerning a "New Federalism" in the report of the Special Investigation Committee. Further, I believe that other points contained in that report can be modified to better meet the needs of the tribes.

Subsistence - The Alaska legislature did not pass legislation to address the Alaska State Supreme Court ruling in McDowell that the "rural" provision of the State's subsistence law is not in concert with the State's Constitution. This triggers federal take-over of fish and game management on federal land in Alaska. My Tribe has put forth a proposal to fund tribal and federal activities to implement sound management policies on subsistence.

PL 100-472 - My Tribe urges immediate implementation of PL 100-472. The regulation promulgation process has taken far too long and this has created substantial hardships to my Tribe. Most of this important law can be implemented without regulations.

Thank you, Mr. Chairman, for the opportunity to give my testimony to a very distinguished committee.

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TESTIMONY OF
MR. DALE RISLING, CHAIRMAN
HOOPA VALLEY TRIBE OF CALIFORNIA
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
MAY 11, 1990

Good morning, Mr. Chairman. I am Dale Risling, Chairman of the Hoopa Valley tribe of California. I appreciate you providing me the opportunity to testify before the Committee today on the subject of Indian initiatives of the 90's. This subject is of special concern to the Hoopa Valley tribe since our Tribal Government has just recently been freed from the threats of termination through the passage of Public Law 100-580.

As you know, the Hoopa Reservation is located in the remote mountains of Northern California, near the Oregon border. It is in our Valley that our people believe that life itself began. Carbon studies from our ceremonial firepits date Hoopa existence in our homeland to over 10,000 years. However as a result of mistakes of the Federal Government, our Reservation has undergone extensive and very expensive litigation.

From litigation, including the Jessie Short and Puzz cases, have been the source of misery, frustration and destruction on our Reservation for over 2 1/2 decades. Since 1963, these cases also spawned over 16 separate lawsuits involving jurisdictional issues, the exercise of Reservation rights and the uses of revenues. The litigation brought to our Indian people very high rates of unemployment, social and economic depression and a deep rooted mistrust of the Federal Government and courts.

Of all the problems generated by the litigation, the most ironic to our tribe was how much control, pain and suffering could be imposed on our people and tribal Government by our trustee, the Federal Government. During the time of the litigation, the Hoopa Tribe suffered more from the hands of the Federal Government than from any other source. Our tribe experienced a complete takeover of our fishery by the BIA, an attempt to destroy our ability to exercise our sovereign powers under the Gerrard Plan in 1978, a complete withdrawal and relocation of the BIA Northern California Agency from its location on the Hoopa Reservation for over 120 years, until finally in 1988, the BIA took over all Tribal revenues and began spending them for BIA priorities, which is illegal under Federal law.

While on the one hand we have discovered how much control the Federal Government can inflict over our tribe and our Reservation, on the other hand, we have learned to adapt to the obstacles and develop creative solution to them. During the time that we were embroiled in litigation, we negotiated with the Federal Government to secure our annual budgets and developed memorandums of understanding for resource management. In 1985, the Hoopa Tribe became the first Tribe in California to establish a Tribal court and retook control over our fishery from the BIA. Ironically, in 1988 we even had to work to reinforce the support of the Federal Government for the passage of the legislative solution to these problems, the Hoopa-Yurok Settlement Act.

While the years of litigation have caused tremendous problems for our people, it has also provided us with a reason to truly accept the responsibility for correcting the problems that we face. Today, we are concentrating on the task of reorganizing our tribal Government to perform the functions necessary to provide the services to our community and manage our Reservation's resources. We are developing and will implement a "new era" for our Tribe that will insure that our people will not have to suffer as we have in the past. We firmly believe that the only way we can protect our people and Reservation is through the development of a solid governmental structure that can respond the present day challenges.

In preparing for the future, we have developed the following initiatives:

a. We have restructured our Tribal Court and Police Department to institute clearly defined procedures and laws, including those necessary to implement a policy for separation of powers between the various branches of our Tribal Government. In order to assure the accountability of the actions of our Tribal Government, we have initiated the development of a Tribal Grand Jury that will function as a branch of our tribal Court. On April 19, we formally enacted our tribal Children's Code which provides the first Tribal forum in California to enforce the Indian Child Welfare Act.

b. To address the concern of accountability within the operations of our Government, we have enacted Tribal laws such as a Budget Ordinance, Legislative Procedures Act and a revised Tribal Employment Rights Ordinance. We have also established a Tribal Employment Relations Office.

c. To insure the credibility of our Tribal Government, we have implemented a Primary Election process that assures that our Council is elected by a clear majority of our membership. In order to insure the integrity of our enrollment process, we have developed and are presently awaiting approval by the membership of an Enrollment Ordinance that provides for due process for every person affected by it. We are also proposing amendments to our Constitution that incorporates, among other things, a change of our election date to the same as that for national elections.

d. In areas of natural resource management, we have enacted a Tribal Conservation/Trespass law to deal with the illegal use of Reservation resources. We are presently developing a comprehensive land management program and environmental review department to enforce our Tribal Clean Water Codes.

e. To address the social and economic problems resulting from the years of litigation, we have consolidated all Tribal social service programs so that we can provide comprehensive services to our people. We are presently drafting an illegal drug eradication program with the aim of ridding the Hoopa Reservation of illegal drugs within the next 5 years. Unfortunately, because of the cuts in federal funding, we, in 1987, lost our area's only hospital. AS a result, our emergency patients must now be transported over 60 miles to the nearest emergency facilities. We are now working with Senator McCain's staff and the Indian Health Service to develop new and innovative approaches to the problems facing smaller rural health facilities throughout Indian country.

Regarding our economic development ventures, we are currently investigating methods for expanding our timber and fish processing operations so we can employ more Indian people. We are also investigating the possibility of entering into joint business ventures with 3 different Indian Tribes and we have a current interest in purchasing an off-reservation bank and we now own a controlling interest in a construction company. Thus, we are pursuing all aspects of a complete community.

Our approach has been to develop our reservation and Tribal Government in a comprehensive manner. As you can see, we have taken our role of providing responsible government to our people very seriously. We have undertaken the Self-Governance Demonstration Project with the same philosophy.

Turning to the New Federalism and Self Governance issues, we look at both concepts very favorably. As can be expected from our past relationship with the Federal Government, the Hoopa Tribe will implement some type of Self-Governance/New Federalist program with or without those specific proposals. Our Tribe simply will not allow us to accept the obstacles, suppression and contract over us that we have experience in the past.

We firmly believe that neither Self-Governance nor New Federalist should be allowed to effect in any way the historic relationship between Indian Tribes and the Federal Government.

We have treaties and agreements with the Federal Government that will be honored, and we will not allow the Federal Government to ignore its responsibilities under those agreements. In implementing the obligations of those agreements, we believe there are opportunities for Tribes and Federal Government to agree on methods of exercising that responsibility. This is where the government-to-government relationship can be fully implemented so as to accomplish the objectives of both governments.

In implementing the Self-Governments Projects, the Federal Government must recognize Tribal Governments as full parties in the negotiations. By this, we mean that the Federal Government must accept their responsibilities in the process in the same manner as the Tribe will. The Federal Government must be willing to negotiate in good faith with the tribes so that the projects will become assets to the tribes instead of additional liabilities. At present, the Hoopa Tribe administers P.L. 93-638 contracts for about 95% of the Federal programs on our Reservation. However, we are also subsidizing every contract with tribal funds in order to fulfill the responsibility for providing sound management. The dilemma for the Tribe is whether we are more willing to accept under-funded programs of the Tribe to administer or allow the BIA to administer programs while ignoring Tribal objectives.

We do want to point out that we are very skeptical about the funding allocation process proposed in the New Federalism Proposal. We are also concerned that the Secretary of the Interior's office will attempt to use this unclear proposal as an obstacle during our negotiations under the Self-Governance Project. Obviously, the New Federalism and Self-Governance concepts will require extensive review before they become permanent laws.

In conclusion, we believe that indian Country must be prepared to confront the new challenges of the future. We firmly believe these challenges can only be overcome with strong, stable Tribal governments. we, as today's Tribal leaders, must accept the responsibilities of shaping our tribes' government to overcome these challenges while preserving our distinct Tribal philosophies. The Hoopa Tribe stands ready to work with the Federal Government and Congress to develop proposal that further the government-to-government relationship between Indian Tribes and the United States.

Again, I want to express my appreciation for the opportunity to testify on these major issues. I will be glad to answer any questions you may have.

CHAIRMAN
Wayne Ducheneaux

SECRETARY
Arlene Thompson

TREASURER
Mona R. Cudmore I

VICE-CHAIRMAN
Vernon Mestes

CHEYENNE RIVER SIOUX TRIBE

P.O. Box 590
Eagle Butte, South Dakota 57625
(605) 964-4155
(605) 964-4984

TRIBAL COUNCIL MEMBERS

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Vernon Mestes

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May 10, 1990

The Honorable Daniel K. Inouye
Chairman, Select Committee on Indian Affairs
United States Senate
Washington, DC 20510-6450

Re: Testimony on Tribal Initiatives for the 1990s

Dear Chairman Inouye and Honorable Committee Members:

Thank you for the opportunity to provide testimony on "Tribal Initiatives for the 1990s."

As a preliminary matter, I would like to register my objections to the format of the Tribal Leaders' Forum, which was held on May 9-10, 1990 in the Hart Senate Building. While the concept of providing a forum for tribal leaders to "seize the initiative" by developing a National Indian Agenda for the 1990s is laudable, the format of the program, which was developed and controlled by paid consultants, was inappropriate.

Indian tribes and nations were sovereign independent peoples before the coming of the Europeans to America. The United States recognized the sovereignty of Indian nations when it dealt with them through the treaty-making process, securing land and peace for the young Republic. Today, the Congress of the United States continues to recognize the sovereignty of the Indian tribes and nations, and it is the declared policy of the Administration to deal with Indian tribes and nations on the basis of government-to-government relations.

Yet, a handful of tribal leaders are asked to develop a National Indian Agenda for all of Indian country after attending a "hurry-up" meeting that was controlled by consultants, rather than the representatives of tribal governments. This format is in derogation of the federal policy of government-to-government relations and Indian sovereignty, and is unlikely to produce the "comprehensive long range approach" to problems in Indian country

The blue represents the thunder clouds above the world where live the thunderbirds who control the four winds. The rainbow is for the Cheyenne River Sioux People who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka—the Great Mystery. All the colors of the Lakota are visible. The

that is sought after. Therefore, I request that the committee hold further hearings after Indian tribal leaders have had the opportunity to hold regional and national meetings to plan and formulate a "comprehensive long range approach" to the problems facing Indian people in the 1990s.

Nonetheless, I commend the committee for its recent study of the effects of federal budgetary policies on Indian country, and offer my views on some of the critical issues facing Indian people today.

I. The Cheyenne River Sioux Tribe in Historical Perspective

After the Powder River War of 1866-68, the United States asked the Great Sioux Nation for peace, and the Sioux acceded to the request in signing the Treaty of 1868. The Treaty of 1868, among other things, guaranteed the Great Sioux Nation that the Great Sioux Reservation (Western South Dakota) would be "set aside" as the permanent homeland of the Sioux people and that the United States would protect the Sioux from any incursions.

In 1874, a United States Army expedition, unlawfully on the Great Sioux Reservation, discovered gold in the Black Hills. The United States sought to buy the Black Hills, but the Sioux refused to part with their sacred land. In 1876, President Grant decided to take the Black Hills in violation of the Treaty, and sent out Army forces to force the Sioux to "report to agencies." The Sioux fended off the Army's first attacks at the Battle of the Rosebud and the Battle of the Little Big Horn, but finally, through force and starvation, the Army forced the Sioux people to report to agencies.

In 1877, the Congress, without compensating the Sioux, took the Black Hills in what the Supreme Court has called "the most ripe and rank case of dishonorable dealing in the Nation's history." Crazy Horse was murdered that year.

In 1889, the United States pressured the Sioux to sell more of their land, and the Cheyenne River Sioux Reservation was formed when the Great Sioux Reservation was carved into separate reservations. Sitting Bull was murdered the next year, and over 300 Cheyenne River Sioux people were massacred at Wounded Knee when Chief Big Foot tried to flee from the hostile Army troops.

The Cheyenne River Sioux People were then told by the United States to become farmers, but in 1908 the Treaty of 1868 was violated again when the best farm lands on the reservation were sold to non-Indians by the federal government as "surplus lands." At the same time, the United States government actively worked to suppress Sioux language, religion, culture and the traditional institutions of government.

Meanwhile, tribal members struggled to maintain a living, farming and ranching along the remaining fertile bottomlands on the reservation. Yet, in the 1950s, the United States again disrupted the people's way of life with the advent of the Pick-Sloan project. Over 100,000 of the Tribe's best acreage was taken by the United States to build the Oahe Reservoir, but the

Tribe got none of the electricity generated by the largest of the Pick-Sloan hydro-electric dams. Instead, tribal members pay some of the highest electricity rates in the country while the cheap power is sent out of the State to non-Indian agricultural projects.

Against this historical background, is it surprising that social and economic conditions among the Cheyenne River Sioux people are devastating? Our high school drop-out rate is 35%. Our unemployment rate is 65%. Per capita income is approximately $3,000 per year, and many tribal members are without housing. In the last census, the United States determined that Ziebach County (which lies wholly within the reservation) was the second poorest county in the Nation.

II. The Federal Budget for Indian Country

In the treaty-making period, the United States undertook a trust responsibility to "protect" Indian tribes and nations. Yet, Indians, historically, have had the poorest health, the highest unemployment and lowest income of any group in America, and the federal government has failed to fulfill its trust responsibility to Indian tribes and nations.

Now, the Senate Select Committee on Indian Affairs has "discovered" what tribal leaders have been saying for the last fifteen years -- "Indians, the population group which suffers the worst conditions of unemployment, poor health, inadequate education, and other social and economic problems, are the people who, over the past decade, have also suffered the deepest cuts in federal spending for programs designed for their benefit." The Committee estimates that "Indian-related spending ... has been declining by as much as 40 percent in the past ten years."

Meanwhile, the Bureau of Indian Affairs has suggested a cut in operating funds for local Indian programs. No one can doubt that there are serious problems with the current system for budgeting Indian programs. What are the solutions? A) Insure that appropriations for Indian country are safeguarded from new efforts to "trim" the budget; B) Provide tribes the opportunity to meaningfully participate in the formulation of the budget for Indian country; C) Require the Administration to practice "truth in budgeting"; and D) Provide for Indian country's "unmet needs."

A. Safeguarding Indian Appropriations

The federal government has undertaken a sacred trust responsibility to Indian tribes and nations. Thus, in the view of tribal leaders, funding for Indian programs is not part of discretionary spending, but rather a mandatory obligation of the federal government. Therefore, Indian programs must be protected from routine budget cuts.

The House of Representatives has a program designed to safeguard vital programs to low-income people from budgetary pressures. Under the "Low-Income/High Priority Program," the

House Budget Committee protects low-income people from disaster "by providing funding at a minimum at the CBO baseline amount." For the past two years, "Indian assistance, energy assistance, education, health, nutrition, social services, legal services, housing, and homeless assistance programs" have been included in the House initiative.

The Cheyenne River Sioux Tribe requests that the Senate develop a similar plan for protecting Indian programs from any future budgetary pressures. In this way, we can be assured that Indian tribes and nations will not have to repeat the disasterous experience of the past decade.

B. Tribal Participation in the Budgetary Process

Currently, the Bureau of Indian Affairs utilizes the Indian Priority System to get tribal input into the Bureau's budget. Unfortunately, the rigidity of that system and the Bureau's refusal to listen to the voice of tribal leadership renders the system a meaningless paper shuffle. Tribal needs are ignored in the budget formulation process, and the tribes are then face with a "fait accompli" when the Bureau issues its budget request.

Indian tribes and nations should have the opportunity to be involved in the budgetary formulation process from the very beginning to the very end. And, indeed, Congress has already mandated that the federal government provide for ongoing tribal participation throughout the budgetary process. Under the Indian Reorganization Act of 1934 ("IRA"), 25 U.S.C. sec. 476, the Bureau must consult with Indian tribes prior to the submission of a budget. Pursuant to the IRA, the Cheyenne River Sioux Tribe's Constitution provides that: The tribal council shall have the power "to confer with the Secretary of the Interior upon all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and Congress." The Congress should require the Secretary of the Interior to comply with this law.

C. The Administration Should Practice Truth in Budgeting

Although the Administration's budget proposal purports to request funding to maintain the current level of services for Indian programs, in reality, it fails to request necessary inflationary increases, fails to account for population increases and fails to accomodate new program expenses and requirements. In FY '91, for example, the IHS budget contains a projected $40 million in third party payments to offset the request for tribal services. Yet, in FY '90, IHS collected only a few hundred thousand dollars in third party payments and it is unlikely that the IHS will collect anything near the amount estimated. Unless Congress requires the IHS to practice truth in budgeting, the budget for Indian country will continue to be eroded by increased costs and inflation.

D. Identifying Unmet Need in Indian Country

Congress has enacted many important programs for Indian tribes and nations which currently go underfunded. For example, Congress passed the Indian Child Welfare Act in 1978 to protect the future of Indian tribes, their children. The Act provides for tribal assumption of jurisdiction where the custody of Indian children is at issue, but funds necessary to implement the Act have never been made available to the majority of tribes. Yet, the Bureau's budget request for FY '91 proposes a decrease of $4.8 million dollars in the Indian Child Welfare Grants Program. Based on the proposed 55% budget reduction, only 14% of the 400 plus eligible tribes will receive grant funds.

Similarly, the Carnegie Report recently identified the Tribally Controlled Community Colleges as a vital force for positive growth in reservation communities. Nevertheless, the Bureau has failed to request the level of funding that Congress mandated for each enrolled student in the Tribally Controlled Community College Act.

These are but two examples of unmet need: the difference between what Indians currently receive and what is necessary to carry out the laws enacted by Congress. In the Aberdeen Area alone, a recent study by the Tribe indicated that there is a backlog of $5 Billion of unmet need! If the federal government expects to fulfill its trust responsibilty to Indian tribes and nations, the Bureau and the IHS must address the unmet needs of Indians.

Failure to address unmet need now will compound Indian problems, especially in the health area. The Fetal Alcohol Syndrome is a good example. Alcoholism is considered the number one health problem of American Indians and nearly 20% of all Indian children are affected to some degree by Fetal Alcohol Syndrome or Fetal Alcohol Effect. The disease is 100% preventable, but 100% incurable and victims require lifelong care and service. Without question, prevention now is the rational, cost-effective way to deal with Fetal Alcohol Syndrome, yet the IHS fails to request adequate funds for preventative care.

III. The Immediate Need For More Funds

Obviously, in addition to changing the process, Indian tribes need help in the form of additional appropriations today to provide the essentials of life for tribal members: nutrition, housing, health care and education. Tribes also need direct funds or tax incentives to promote tribal economic activity.

The Committee laudably proposed to remedy the problem by increasing the level of appropriations for the next fiscal year $754 million over the current year's level. The Cheyenne River Sioux Tribe fully supports this initiative; however, the House Interior and Insular Affairs Committee has recommended an increase of only $200 million.

The Tribe recognizes that the legislative process is a process of compromise and cooperation, and therefore, realizes that the full $754 million in increased appropriations proposed by the Senate Select Committee will probably not be realized this year. The Tribe is, however, committed to working on restoring Indian programs and services over the next several years, and views $200 million as the absolute minimum required to help restore some of the ground Indian tribes and nations have lost since 1982. Therefore, the Tribe requests the Committee's help in meeting the minimum necessary for this year, and further, the Tribe requests support for continued increases over the next five years in order to achieve and maintain a solid base of funding for essential services.

IV. Concluding Note

In conclusion, I note that there are many other issues that need to be addressed in any National Indian Agenda for the 1990s, including the Supreme Court's recent decisions on tribal jurisdiction and the Committee's "New Federalism" proposal, among others. I trust, however, that the Committee will provide tribal leaders with opportunities to explore such issues at future hearings, after Indian tribal leaders have had the opportunity to more fully explore these issues among themselves.

Sincerely,

Wayne Ducheneaux /MCR

Wayne Ducheneaux, Chairman
Cheyenne River Sioux Tribe

Testimony of Laguna Industries
Before the Senate Select
Committee on Indian Affairs
Hearing on The Tribal Leaders Forum

May 11, 1990

For the past 15 to 20 years, the Federal Indian policy has been that of self-determination and economic self-sufficiency. The goal of self-determination is to enable tribes to control the federal programs that serve them. However, control of federal programs is only one part of the issues tribes face, since the services provided by the Federal government address only a portion of the problems tribes must overcome. Even if tribes were able to fully control all federal programs serving them, they would still have inadequate funds and inadequate legal authority to significantly improve the condition of the tribe or its members. The broader issue is social, governmental and economic self-sufficiency -- ensuring that the tribal government has the tools it needs to govern effectively and that there is a sufficient economy on reservations to provide members with a decent standard of living. The Congress and the federal agencies have largely accepted such self-sufficiency as their goal, as have most tribes.

What is shocking when one reviews "where we are now" in this light is the small amount of legislation and the small amount of appropriations devoted to these objectives. While talking about self-sufficiency, the government has given the tribes very few tools or resources to achieve it. Looking at appropriations first, the Federal government spends approximately $3 billion a year on Indian programs. A review shows that the vast bulk of these funds go to the Federal government's older policy towards Indians, which was to ensure bare survival. The bulk of the $3 billion is spent on programs that inadequately provide basic life sustaining services to Indian people and inadequate maintenance of their resources, which are held in trust by the United States.

One third of the $3 billion goes to the Indian Health Service. This represents a doubling of IHS funding over the past 15 years. Yet even today, IHS is able to provide only 75% of the services it considers necessary to provide basic health care. (While government money funds almost all health care to Indians, and absorbs 1/3 of the federal dollars going to Indians in the non-Indian community, employer-provided health insurance pays for the bulk of the health care costs.) IHS has a ten year $500 million backlog for replacement of inadequate clinics and hospitals. The $1 billion also includes funds to provide water and sanitation services to Indian houses to enable Indians to catch up to where the U.S. population was 40 or 50 years ago. Only a very small portion of the IHS funds are devoted to the treatment of alcoholics and mental health, two of the most serious problems facing the Indian community.

$1 billion of the $3 billion goes to the Bureau of Indian Affairs (BIA). The BIA budget has not increased in ten years, despite substantial inflation and a huge increase in the Indian population. Of the $1 billion, 30% of the dollars go to education. Most of these funds are spent to educate Indian children who for a variety of reasons cannot be educated in local public schools. The Department of Education also provides grants, impact aid operating funds and construction funds to public school districts that serve Indian children, largely to compensate for the lack of a property tax base on reservations, the normal source of public school financing. The backlog for new public and BIA schools is approximately $1 billion.

15% of the BIA's money goes to maintaining the federal government's trust responsibility for Indian owned land and natural resources. $20 million alone goes to keep track of and to probate the fractionated heirship status of Indian land, under which a 160 acre parcel may be owned by 1,000 heirs, none of whom can use the land productively. 30% of the BIA budget goes to programs collected under the title "Indian government services." This includes law enforcement, housing repair, job training, and self-determination indirect costs. But the bulk of this funding (two-thirds) goes to two items -- General Assistance and paying BIA employees at the Agency level. The only program the BIA has to promote economic development is its loan, loan guarantee and 25%-75% matching grant programs. The total budget for which is $13 million, or 1% of the BIA budget. There is a very small amount of BIA funds available to enable tribes to improve their governmental structures, to strengthen their court systems, or otherwise strengthen their ability to govern.

Non-IHS and BIA programs include the Indian Housing Program at HUD. Virtually all houses built on reservations have been funded under this program. (By contract, in the non-Indian community, most of the housing has been built and financed by the private sector.) In FY 90 this program was given funds to build 1,800 units, to address a 100,000 unit backlog. The Community Development Block Grant funds, which also flow through HUD, are among the most flexible funds available to tribes ($27 million). (They are flexible because in the late 70's, a group of tribes lobbied for an Indian set-aside and then forced HUD to adopt regulations that reflected tribal needs rather than HUD-dictated needs.) Other funds include $75 million for road construction which come from the Federal Highway Administration to the BIA, which awards the construction contracts. The Department of Labor operates the Jobs Partnership Training program, which provides funds for training. The Department of Health and Human Services provides funds for Headstart programs and aging programs. The only funds available in the entire federal government for a tribe that wants to conduct a feasibility study to promote economic development is the $28 million provided to ANA, an amount which has not increased in 10 years.

In sum, a review of the appropriations situation shows that the funding for Indians is grossly inadequate to meet the needs of programs that were central to the federal Indian strategy of 20 years ago, which was simply to ensure bare survival. There is virtually no funds available to assist tribes achieve social and economic self-sufficiency. Tribal governments have made huge strides over the past 25 years, going from bare bones entities that often were mere rubber stamps of the BIA, to fully functioning governments. But much of the initial start was made with OEO funds and with tribal income. Presently there is little federal assistance available to promote tribal government. Yet strong tribal governments are essential to the assumption of federal programs, to the delivery of adequate services to tribal members, and to creating an environment, including a legal (court and laws) environment, that is conducive to economic development. Other than ANA funds, the only funds available for economic development are a limited patchwork of BIA loans, EDA grants and loans, and the CDBG program. None of them are coordinated and one has to become a master grantsman to pull them together effectively for an economic development project. The effort of just pulling these pieces together for a single project can absorb a tribe's planning department for years.

A review of the legislation enacted over the past 20 years shows a similar pattern. They have only picked away at the fringes of the authorities tribes need to be self-sufficient; they have failed to begin to get to the heart of that need. One of the first major pieces of legislation of the "modern" era was the Indian Finance Act, which authorized the BIA to make loans and loan guaranteed to tribes. Under its general authority the BIA has also, on and off, provided matching grants to tribes for economic development. The loans and loan guaranteeds provide interest rates several points below market rates, (today it would be about 8 - 8.5%). (In comparison, the United States economic development loans to China are at a zero interest rate). The second major piece of legislation was the Self-determination Act, which empowered tribes to take control over the BIA and IHS programs serving their tribal members. This Act was amended in 1988 to remove some of the obstacles the agencies were placing in the way of tribes fully utilizing the Act. There has been a significant amount of BIA and IHS programs moving to tribal control. However, because of the inadequate funding of the BIA and IHS programs, tribes are not able to significantly improve the services provided by those programs when they take them over. Nor are there funds to enable tribes to plan for the assumption of such programs so most take them over and operate them the same way the BIA or IHS did.

Another major piece of legislation that gave tribes greater power vis-a-vis the federal government was the Indian Minerals Leasing Act of 1983 which gave tribes greater flexibility in leasing or otherwise putting to work their mineral resources. The Indian Health Care Improvement Act was largely an empty shell that added little to the funds or power available to tribes. The Indian Civil Rights Act as amended gave individuals rights against the Tribe. The Indian Tax Status Act gave tribes the same rights as states to issue municipal bonds for governmental purposes and exemptions from certain federal taxes. However, Congress subsequently took away the Act's provisions that enabled tribes to use bonds for economic development, but refused to give them the same right as states have to use Industrial Revenue Bonds to promote economic development. The Indian Lands Consolidation Act sought to address the problem of fractionated heirships, but was weakened by the courts and was never accompanied by any funding. As a result, it has had a minimal impact.

During the past few years there have been several legislative initiatives to promote Indian economic development, including the SBA 8(a) joint venture provision, the 5% bonus for using Indian subcontractors, and the right to count company facilities on reservations towards the company's DBE subcontract goal. Each of these took a tremendous effort to get enacted and will be extremely useful to a select group of tribal industries. But none of them will provide a major tool for solving the economic development problems faced by most tribes.

The Courts also effect the authority of tribes, their ability to control activities on reservations, and their ability to raise revenues. The court decisions over the past ten years have been inconsistent, but have not helped to build a strong legal basis for tribal self-sufficiency. The courts have held that tribes have the authority to tax Indians and non-Indians on Indian-owned land, but the State also has that authority except where there is a major federal presence, such as taxation of a contractor building a federally funded school or houses. The tribe's civil regulations and laws apply to Indians and non-Indians on Indian-owned land, but apply to non-Indians on non-Indian-owned land within the reservation only in certain limited circumstances. In certain cases state regulatory law will also apply to non-Indians on Indian owned land. The tribe has no criminal authority over non-Indians, even on Indian owned land. In sum, the tribe has full jurisdiction over Indians within the reservation, but has very limited jurisdiction over non-Indians and must share that jurisdiction with the state in many situations.

The bottom line is that Congress and the courts has not provided tribes with the funds, the legal authority or the legal tools to accomplish the self-sufficiency goals that Congress has established for tribes. Instead, the funding and legislation has effectively been picking around at the edges of the problem rather than providing anything that could reasonably be expected to enable tribes to achieve self-sufficiency. This results in part from the severe budget constraints that began during the Reagan years and continue today; in part because there is no comprehensive and coherent approach for solving the problems, and in part because tribes have not effectively marshalled the political power they potentially have (instead its been individual tribes or small groups lobbying for limited specialized legislation). Perhaps most importantly the tribes have not educated Congress and the public that they have made enormous progress over the past 25 years but that the federal government needs to dramatically upgrade the tools it is providing tribes so they can progress to the next plateau of self-sufficiency.

The next few years provide a unique set of circumstances to tribes to get Congress to dramatically upgrade the tools -- to stop playing around the outer edges and instead give tribes the real authority and real resources they need to achieve self-sufficiency. For example, in 1992, the 500th anniversary of the arrival of Columbus will focus attention on Native Americans, providing the spotlight in which tribes can make their case.

The tribal leaders forum, and the ten year plan for Indian legislation that is to emerge, offers the vehicle to achieve the dramatic upgrade in federal programs. However, to be effective there will have to be:

a) The development of a coherent vision and program on Indian self-sufficiency that can be sold to Congress and the

American people. It will be much easier to get major initiatives through Congress if Congress is shown that there is a persuasive long-term plan for helping tribes achieve self-sufficiency and that the specific piece of legislation is an intrinsic part of that plan. Right now no one in Congress has any sense of where tribes are going. As a result they see each piece of legislation as an isolated bill. This needs to change. Also by first developing an overall plan or vision, it becomes possible to develop a "bandwagon" effect -- that this is an idea whose time has come. Most major legislation moves through Congress in this way.

b) Unity among the tribes. They need to put their resources behind the plan, even at the expense of individual tribal needs, such as a new hospital or more funding for its range management programs.

c) Hard choices made about priorities. Even with the peace dividend, there will not be enough money in the near future to meet all of the unmet needs in Indian country -- all of the new hospitals and schools, all of the social services, etc. The options are:

1) To ask Congress to spread any new money around evenly among all these programs, so each will have more money but each still be inadequately funded, or

2) To ask Congress to focus whatever monies that become available in the near future on those elements that will promote self-sufficiency, such as economic development and tribal government development, on the assumption that once tribes are self-

sufficient, many of the problems will diminish and tribes will have the tools to better solve the problems themselves.

It will not be easy to make these choices because the needs are so great in so many areas and there are so many people who are now suffering. But unless the near-term focus moves away from seeking more money just to maintain what now exist and focuses instead on money to help achieve economic and developmental self-sufficiency, the latter is unlikely to occur soon.

In addition, there is a need to develop a coherent set of legislative proposals that can become the agenda for the Select Committee and the Indian community. For the near term it needs to focus as those proposals which have a small budget impact or which do not require appropriations, such as procurement set-asides to primate Indian business.

As an example of what this can look like, we are enclosing a draft 10 year legislative plan for economic development. It is not a final product but can provide the starting point for the Indian community, one they can review, change and improve. (copy enclosed as attachment A)

In summary, we appreciate the extraordinary effort the Committee has made to dialogue with the Indian community and to assist us to develop the national agenda we need to achieve our long term goals.

Ten Year Plan For Economic Development

The goal for the ten year plan for economic development is to enact legislation and encourage federal agency action that will assist tribes, Indian businesspersons and the private sector develop vibrant, multi-sector economies on their reservations. There is no one sector of the economy that offers a panacea for the economic deficiencies that presently plague reservations. Instead assistance must be provided to promote tribally-owned enterprises, individual Indian businesses, and non-Indian private sector activity in the full range of economic sectors that can be developed on reservations, including in such areas as manufacturing, commercial, agriculture, tourism, natural resources, arts and crafts, energy, and environmental. It will be up to the tribes and Indian and non-Indian businesspersons to decide which economic areas make sense on a particular reservation. But the goal must be to develop complete and diverse economies on reservations.

Attaining this goal will do more than just promote reservation economies. It will also help to alleviate many of the other problems that are present in reservations, including poverty, alcoholism, drugs and other social problems, substandard housing, and inadequate health care. In addition, with economic self-sufficiency comes the freedom to choose ones own lifestyle and to maintain and develop the Indian culture, practices and values that are so important to tribes and Indian people.

The specific and measurable goal for the ten year plan is to decrease the number of Indians presently on general assistance by 60% over the next ten years through increased economic activity. In addition to providing a quantifiable measure, this will enable the plan to demonstrate with hard numbers that the federal investment in Indian economic development reduces the federal budget by decreasing welfare payments to and increasing federal tax receipts from Indians.

The components of the ten year plan seek to reach this goal by achieving four main objectives; expanding and strengthening the role and capabilities of 1) the federal government, 2) tribal governments, and 3) Indian and non-Indian businesspersons, and 4) ensuring the availability of useful and timely information and assistance. Each of these objectives is discussed briefly below.

The Role of the Federal Government

The first premise on which the ten year plan is built is that there is a significant, distinct and effective role for the federal government in Indian economic development. One to two hundred years ago, the federal government destroyed the traditional economies of tribes and put nothing in their place. This left an economic desert on many reservations and Alaska communities. It is unrealistic to expect economic activity to flourish in such climates. There is little to attract outside investment and tribes and individual Indians have had little opportunity to develop the managerial, technical or financial capability to make the economy flourish by themselves. This imposes a special responsibility on the federal government to help start-up the economies on reservations. The Federal government must play a larger role during the initial stages of development than the government would ordinarily play in local economies, and must shoulder its share of the greater risks involved in developing businesses in what is presently an underdeveloped business environment. This obligation is met in the plan through such components as aggressive use of the Federal government's procurement system, through the establishment of various set-aside programs to help Indian businesses get up and running, tax-incentives to attract private sector businesses, grant funds for feasibility and start-up activities, and the creation of financial institutions designed to meet the unique situations faced on reservations.

The Role of Tribal Governments

The second objective of the plan is to develop tribal institutions that have the capability to promote economic development at the reservation level in the various economic sectors. There is little benefit in creating federal set-aside and financial programs unless the capability exists at the local level to put those programs to work. In the typical non-Indian community, the existing business community serves as the generator of new business activity. But since there is such a small existing business community on many reservations, the tribal government must serve in this role for the present. It must be assisted to establish the institutional capability needed to develop tribally owned enterprises, to help its tribal members become successful entrepreneurs and to create an environment that will be attractive to the outside private sector.

The ten year plan seeks to establish tribal capability in the various sectors of the economy -- small business, agriculture, manufacturing etc. by providing $10 million per year for capability development, in the form of approximately 100 three year grants of $100,000 each, spread out over the different economic sectors that offer development opportunities, e.g.; 10 grants to help tribes develop their agricultural economy, 10 to promote tribal manufacturing enterprises, etc. There is no boilerplate approach that can be dictated from Washington on how tribes should develop any of these areas. Each tribe is different and the approaches must be developed at the tribal level. The role of the federal government should be to give the tribes the resources to develop their approaches. The first ten tribes in each economic sector will carry the heaviest burden of often breaking new ground and developing the approaches and techniques, the systems, the written documents, the training materials etc. needed to promote economic development in that sector on their reservations. (Of course there are already many successes that serve as models in many economic sectors to which even the initial tribes can turn.) It is recognized that not all efforts will be successful, but that is true for business development anywhere. However, those tribes that succeed will have developed success models that other tribes can use. As a result, future grant funds can be used to help the next group of 10 tribes seeking to develop in that sector, whose efforts should be much less difficult because they will be able to learn from the experiences of the first set of tribes. This targeting will allow a total of 100 tribes to be focusing on capability development in the various one economic sector at any one time, thereby ensuring a burst of economic activity on those reservations and creating the motion and momentum that must be the beginning of renewed economic vitality. Grant funds will also be provided to provide technical assistance to firms once they are up and running as they struggle with the problems that are common to firms at this early state of their development. This approach also represents the best targeting of Federal funds at a time when the availability of new Federal funds is severely limited.

There are other steps that only tribal governments can take, such as creating a positive climate for business on their reservations, enacting business codes and ordinances separating economic development from politics, doing sound economic planning, depositing their savings and trust funds in ways that encourage local financial institutions to be more open to Indian business proposals, and sharing their experiences with other tribes. Thus tribes must develop and implement their own ten year plans to enable them to meet the responsibilities that rest with them. As part of its ten year plan, the Committee invites the tribal governments to enter into a partnership with the Congress and the Executive Branch, within which each will carry its share of the responsibility and where we will work together to develop flourishing and self-sustaining economies on the reservations.

3. **The Role of Indian and non-Indian Businesspersons**

The third objective for the ten year plan is to provide Indian and non-Indian businesspersons with the incentives and assistance they need to develop a viable private entrepreneurial community on reservations. The experts all tell us that one learns to become an entrepreneur by growing up surrounded by entrepreneurial activity. Since reservations cannot offer this to Indian children at the present, one of the Plan's objective is to seek the best substitutes, such as making intensive and extensive technical assistance and training available on the reservation, linkages with university business schools, mentorships for Indian businesspersons, and a business school scholarship fund. The plan also addresses the issues of access to capital and access to markets.

4. Information and Communication

The fourth objective of the plan is to ensure that information needed for economic development is communicated fully, rapidly and in usable form to the reservation level. This includes information on models and approaches that have worked successfully on a reservation, information on procurement and financing opportunities, and information on new economic trends so that tribal economies can catch an economic wave as it is rising rather than after it has already peaked. For example, the next ten years will see a tremendous expansion in the alternative energy and environmental sectors of the economies. Information on these developing sectors needs to be communicated to the reservation quickly and in a form that enables the tribes to become participants in the expanding sectors (if they wish). Experience has shown that an effective vehicle for such information collection and dissemination are the various national Indian non-profit economic development organizations that have ties to the reservation level. Therefore the ten year plan seeks to strengthen the ability of these organizations to serve as a vehicle for ideas and information between Washington, the national economy and successful tribal models on the one hand and the developing reservations on the other.

The Specific Components of the Ten Year Plan

In order to achieve the goals and objectives described above, the Committee will seek to implement the following components through legislation or through oversight of the activities of the various agencies of the Executive branch:

1. TRIBALLY-OWNED MANUFACTURING ENTERPRISES

The past ten years have shown that one effective way to begin economic activity on reservations is for tribes to set up their own manufacturing enterprises, with help from the federal government's set-aside program. One of the increased risks the Federal government has an obligation to take is to be the first purchaser of goods from a new Indian manufacturing enterprise and to continue to be a major customer until the enterprise has the necessary track record to be attractive to the private sector. In 1988, the Committee initiated legislation that changed the SBA 8(a) program and the Defense Department's Small and Disadvantaged Business subcontracting program to make them more accessible to tribal enterprises. During the next ten years, the Committee will do the following:

a. Improve the federal set-aside programs. The Committee will closely monitor the effectiveness of the changes in the SBA and DoD programs and encourage SBA and DoD to implement them fully. If it becomes clear that these changes are not effective in enabling tribes to use the Federal procurement system as a way to start-up reservation businesses, the Committee will introduce new legislation creating a separate and special set-aside program for tribal enterprises. The Committee will also introduce legislation requiring other Federal agencies, such as DOE and EPA, to institute the same kind of forceful minority contract and subcontract program that is now required of DOD.

b. **Mentorships with large corporations**. One successful approach has been for tribes to enter into relationships with large corporations which provide technical and managerial assistance to help tribes set up new enterprises. To encourage such efforts the Committee will propose a mentorship grant program in which up to one-time grants of $100,000 each will be made to tribes each year to pay for the costs of contracting for assistance with the large corporations. The members of the Committee will also use their positions on other Senatorial committees to encourage large corporations to enter into such relationships with tribes.

c. **Subcontracting**. Building on a program that was successfully used in the other minority communities, the Committee will ask DoD to identify a large single procurement, such as a new plane or helicopter, that is in the developmental stage and work with the Indian business community from the very beginning to identify Indian firms that can serve as subcontractors and to encourage tribes and individual Indians to establish firms to meet other subcontracting opportunities offered by the large procurement.

d. **Product identification**. One of the greatest frustrations tribes face when seeking to use the federal procurement set-aside programs is trying to identify a product that the federal government purchases that they can manufacture. The Committee will work with the federal agencies' procurement offices to develop a protocol under which if a tribe has developed a complete business plan and approaches one of the participating federal agencies, that agency will work closely with the tribe to help identify possible products the tribe could manufacture.

2. TAX INCENTIVES TO PROMOTE PRIVATE SECTOR RESERVATION DEVELOPMENT

Tribal governments cannot carry the full load of starting a manufacturing sector on the reservations. The private sector also needs to be given incentives to invest in economic activity on reservations. The experience in Puerto Rico and elsewhere shows that tax incentives are a very effective vehicle for attracting private sector development in the manufacturing area. Therefore the Committee will work aggressively to promote enactment of the Indian Economic Development Act to provide investment tax credits, employment credits and federal income tax reductions for private sector investments on reservations. The

Committee will also seek legislation to provide tax relief from the negative effect the Cotton decision is having on reservation private sector investment.

3. PROMOTING INDIAN ENTREPRENEURSHIP

To have viable economies, there is also a need to develop the small business sector on reservations. The Committee will take the following action in this area:

a. **Buy-Indian Act Amendments**. The Committee will aggressively promote enactment of the Buy-Indian Act amendments that were approved by the Committee on September 8, 1989. The bill will ensure that Indian-owned businesses will provide a much greater portion of the supplies and services procured by agencies serving Indians. The Committee intends to see the amount of purchasing under the Buy-Indian Act grow substantially over the next ten years, and to branch out from its use largely in construction related work to cover the full spectrum of goods and services provided by the agencies serving Indians. The Committee will require each covered agency to prepare and publish a list of all areas of their procurement that offer opportunities for Indian business development. The Committee's goal is that by the year 2000, 80% to 90% of all goods and services purchased by these agencies will be provided by Indian owned businesses. In light of the special responsibilities and authorities that rest with the Secretary of the Interior, the Committee will also encourage the Secretary to make the procurement opportunities of the entire Department, not just the BIA, available to Indian businesses through the various set-aside programs.

b. **Changes in SBA programs**. The Committee will propose to the Senate Small Business Committee changes in the legislation covering the Small Business Administration to make SBA programs more accessible to Indian businesses. The SBA provides a broad range of technical assistance and training programs that could help fill the gap faced by Indian businesspersons created by the lack of a significant entrepreneurial community on most reservations. The legislative changes will provide reservations with relationships with university business schools, on-site technical assistance centers, retired executives, and mentorships with successful businesses.

c. **Demonstration grant program**. The Committee will propose a tribal small business capability development demonstration grant program under which 10 tribes will receive grants of up to $100,000 to $200,000 a year to establish, within the tribal government or within separate corporations, resources centers for Indian small business development. The technical assistance Indian businesspersons need is more likely to be used and useful if it is available right on the reservation from experienced and capable resources. The centers will be responsible for pulling in the various resources available from state, federal, and private sources for small businesses, providing centralized accounting, computer and other centralized services, and providing information on procurement, financial and other opportunities.

4. AGRICULTURE

Agriculture offers tribes and tribal members the opportunity to use their most abundant renewable natural resource for economic development. A recent study showed that only one third of the half a billion dollars earned from Indian lands goes to Indians. To promote the agricultural economy on reservations the Committee will:

a. Work with the Senate Agricultural Committee to amend the various farm laws to remove barriers to Indian participation in the federal government's $25 billion a year farm support program and to provide extension agents to reservations.

b. The Committee will introduce legislation to address agricultural issues within the jurisdiction of the Committee, including:

1. Establish a low interest loan program to enable tribes to consolidate land holdings and thereby eliminate the fractionated interest situation that severely harms the ability of tribes and members to obtain maximum economic benefit from their land holdings.

2. Provide funds to promote the sale of Indian agricultural products in international trade, such as lean beef to the Pacific Rim countries.

3. Establish a tribal agriculture development demonstration grant program under which 10 tribes will receive grant funds to develop a reservation based institutional capability in agriculture. These tribal or tribally related offices will be available to assist the tribe and its members access federal agricultural programs, to provide technical assistance to members in farming and ranching, help to market agricultural products from the reservation and to assist the tribe rationalize its land situation.

d. Improve the economic productivity of tribal timber through the enactment of the Forest Resource Management Act bill. In addition the Committee will seek an Indian set-aside in President Bush's proposal to plant 1 billion trees, so that a significant portion of those trees are planted on Indian reservations.

5. ARTS AND CRAFTS

The Committee will:

a. Enact legislation requiring 1) that all Indian-style arts and crafts be marked so they indicate whether they are Indian-made and 2) permitting Indian craftspersons to obtain trademarks for their unique designs.

b. The Federal government spends substantial amounts of money to promote the sales of American-made products overseas. The Committee will advocate for such appropriations to include funds to promote the sale of Indian arts and crafts in the international market, in ways that ensure the greatest possible return to the Indian craftsperson.

c. Establish a tribal arts and crafts development demonstration grant program under which ten tribes will receive grants to develop the tribe's institutional capability to organize and promote the arts and crafts industry on their reservation, in order to expand markets and to ensure that a greater portion of the profits stay on the reservation.

6. TOURISM

Tourism, particularly from overseas, is one of the fastest growing sectors of the economy. Each tribe needs to make its own decision on whether it wants to promote tourism on its reservation. For those that do, resources must be made available to assist them. The national parks of this country are already overutilized, threatening the very attractions the people come to see. Reservations have some of the most beautiful undeveloped land left in the country. By developing this resource tribes can help to alleviate the growing pressure on the national parks while at the same time developing their economy. Under the ten year plan, the Committee will:

a. Make the resources of the National Park Service and the Forest Service available to assist tribes develop their tourist attractions. These agencies will provide technical assistance in planning and developing them, provide advice on the management of concessionaires and train tribal members in park recreational management. The legislation will also provide for the tribal parks to tap into the national park system for purposes of marketing, making reservations, resource management initiatives, etc.

b. Establish a tourism development demonstration grant program under which ten tribes will receive funding to develop their institutional capability to develop the tourism sector on their reservations.

c. Request that a portion of federal funds appropriated to promote the U.S. tourism sector in foreign countries be devoted to the promotion of tourism on reservations.

7. ENERGY

The country faces another energy crisis, of a duel nature. We will need to develop a great deal of additional electric generating capacity over the next ten years. But in addition, we need to create electricity and to fuel motor vehicles in a way that does not continue to harm our environment. Tribes own a substantial portion of the clean fuels needed to meet these needs, including clean coal, natural gas, and uranium. Reservations also offer sites for alternative energy production that will provide an increasingly larger share of our electricity through solar, hydroelectric, municipal solid waste and wind energy and for the production of alternative fuels such as methanol and ethanol. In the past, reservations have contributed the raw material for our energy needs but have not had an opportunity to participate in any of the other stages which offer substantial profits and employment. In addition, rights of ways for much of the country's electricity grid cross reservations but tribes have not been participating as fully as they should in the benefits from these. To help develop the reservation's energy sector, the Committee will:

a. Introduce legislation that would provide an Indian or reservation set-aside or preference in any federal program that is established to promote the development of clean or alternative energy or fuels.

b. Introduce legislation that would require the Federal energy marketing administrations, such as WAPA, to provide technical assistance to tribes on the role they could play in the generation and transmission of electricity.

c. Establish an energy development demonstration grant program to assist ten tribes develop their capability to promote the development of the alternative energy sector on their reservations.

8. ENVIRONMENTAL

The fastest growing sector of the economy over the next ten years will be that involved in environmental clean-up, which covers everything from nuclear, hazardous and solid waste disposal to emergency response teams to manufacturing products that reduce pollution. As we near the 500th anniversary of Columbus' visit to America, it is appropriate that Native Americans take the lead in cleaning up the environmental problems that followed in Columbus' wake and restoring, to the extent possible, the clean air, water, and land that was present when

Native-Americans governed this land. To promote this the Committee will:

a. Introduce legislation creating an Indian or minority set-aside under the EPA and Department of Energy programs. The set-aside would be similar to that imposed on DoD in that it would require EPA and DOE and their contractors to meet a goal of having no less than 5% of all of their procurement dollars be contracted or subcontracted to Indian or minority owned firms. It took the government far too log to get tough with its DoD program. By the time Congress took it to the point that it was becoming effective, the DoD budget had peaked and is in for a rapid decline. The lesson from the DoD experience must be applied to EPA and DOE in that tough and quantitative Indian or minority utilization and hiring goals, with financial sanctions for failure to meet them, must be established now when the program is just beginning to expand.

b. Introduce legislation that would require EPA to provide technical assistance and advice to tribes in the areas of hazardous waste disposal. Proposals are already being made to tribes regarding the location of nuclear, hazardous or solid waste disposal sites on reservations. It is strictly a tribal decision on whether to proceed with such offers, for only a tribe can balance the economic benefits against the environmental impact. However, it is critical that tribes have the best information possible available to them when they make their decision so they are not misled by the industry on the one hand or the environmentalists on the other.

c. Establish an environmental industry development grant program to assist 10 tribes explore the economic opportunities available in this sector.

9. FINANCING

To accomplish any and all of the above components, tribes and Indian businesspersons will need access to financing. The Federal government must take the lead in this regard but it cannot do it all. The private sector must also carry its proper responsibility. To do this the Committee will:

a. Aggressively pursue the enactment of the Indian Financing Development Corporation bill.

b. Introduce legislation to modify SBA's Minority Enterprise Small Business Investment Corporation program (MESBIC) so it is more appropriate for Indian reservations. Under the MESBIC program, SBA provides four dollars of loan funds for every dollar raised locally. The funds are managed by a corporation established by the investors and may be used for equity investments in or loans to small and disadvantaged businesses.

The program is particularly useful for loans to individual entrepreneurs.

c. Introduce legislation to change the way the BIA and tribes can invest their trust funds so they can be invested in ways that give tribes and Indian businesses greater leverage when seeking business loans from financial institutions.

d. Hold hearings on whether financial institutions in Indian country engage in red-lining, i.e.; discriminating against Indian borrowers because they are Indian or because they are located on reservations.

10. INFORMATION COMMUNICATIONS AND FELLOWSHIP

For any of these components to be effective, information on the special programs created by Congress must be disseminated to the reservations, assistance must be provided in how to use those programs, and information on successful models developed on one reservation must be disseminated to other tribes so they can adapt them for their own use. In addition, the reservations and the Committee need timely information on new trends and opportunities in the economy so that Indian economic development catches the waves on their way up. Finally, assistance must be made available to Indian businesses after they are up and running in order to help them deal with the bumps in the road or to help them expand. To achieve this the Committee will:

a. Establish a contract and grant program that provides funding to national Indian non-profit organizations to serve as the information link between Washington and the reservations on the initiative in each of the economic sectors, to assist tribes use the new programs, to disseminate information among reservations, and to keep the Committee updated on the effectiveness of its various initiatives.

b. Instruct the Congressional Office of Technology Assessment to conduct regular reviews of the field and to report on new technologies that could in some way contribute to Indian economic development.

c. Enact legislation establishing National Indian Business Week in Washington where Indian businesses will be given an opportunity to demonstrate their capabilities and when outstanding tribal and individually-owned Indian businesses will be recognized by Congress and the Executive branch.

d. Establish a technical assistance fund of no less than $500,000 per year to assist existing Indian businesses expand or overcome problems.

PHASE II

The portions of the Ten Year Plan described in the previous section represents only the first phase. It focuses on helping businesses to get started on reservations. Because of the relative lack of technical sophistication among the present labor force on reservations, the businesses created during this start-up phase most likely will be low-tech, requiring relatively low-skilled employment.

But the reservations cannot afford to stay at that level for more than a brief period. The economists tell us that by the year 2000 there will be a hugh shortage of highly-skilled employees and a hugh oversupply of low skilled employees, as the number of low-skilled jobs shrink rapidly. Therefore existing Indian businesses must begin now to upgrade their level of sophistication, while the new businesses started up under the first phase of this program must begin looking in that direction virtually as soon as they are off the ground. This second phase of the Ten Year Plan focuses on ensuring that the ingredients are present to enable reservation industry to make this jump.

1. **Manpower**. There is a need to begin now to educate and train the Indian management team of technologists and technicians that will lead the businesses into the more technically sophisticated areas. This must be done:

a) At the high school level by ensuring students have the math and science.

b) By establishing a scholarship program that finances and encourages Indian students in the engineering and scientific areas that will be key in the coming years.

c) A synergistic relationship with the private sector in which the latter:

(1) trains the Indian college graduates in management and technology through internships at the corporations facilities and other programs so they are prepared to take the reins of the tribal industries.

(2) bring their training capability to the reservation and help the reservation businesses provide on-the-job and short-term training courses to develop the needed technical sophistication.

d) Take Indian workers to their more sophisticated facilities and provide them with intensive training programs.

e) Enter into joint ventures with tribal industries to help them quickly upgrade their level of technological competence while working on a particular procurement or product.

2. Infrastructure.

There is a need to improve the telecommunications and other portions of the reservation infrastructure that are necessary for the introduction of more technological sophisticated industries.

3. Role of the Federal Government.

a. Training

One of the best technological resources on many reservations is the pool of federal or tribal employees who are already trained in computer skills and have state-of-the art equipment in their offices. These employees, through restructuring of their responsibilities, can provide technological assistance to Indian economic development activities and can train others in those skills. The equipment can also be made available during downtimes (including evening and weekends) for training as well as for use by Indian and tribal businesses that cannot afford to purchase such equipment. The skills that exist within the federal and tribal bureaucracy is enormous and should be treated as one of the valuable and untapped resources for rapid technological development in the Indian workforce and by tribal and Indian-owned businesses.

b. Demonstration Grant Program.

There will be created a technological upgrade economic development demonstration grant program under which 10 tribes will receive grants to explore new approaches for using the private sector, institutions of higher learning, federal and tribal government employees, and other resources to help rapidly upgrade the technological sophistication of reservation businesses and the reservation workforce.

These and similar steps need to be flushed-out, turned into legislative proposals and implemented as part of the second phase of the Ten Year Plan, because if reservation economies are not just going to survive but are going to succeed, the plan must assist them during the first part of the 90's to enter the 20th century economy and spend the second half of the 90's assisting them to pass beyond that economy and be ready to participate in the 21st century's technology economy by the year 2000.

The George Washington University
WASHINGTON DC

THE PRESIDENT

Statement of Stephen Joel Trachtenberg
President, The George Washington University
Before the United States Senate Select
Committee on Indian Affairs
Friday - May 11, 1990

Thank you, Mr. Chairman. I am Stephen Joel Trachtenberg, President of The George Washington University in Washington, D.C.

Mr. Chairman, university programs and centers for the study of Native American life exist in other parts of the country, but none exists here in the nation's capital where so many important decisions affecting the future of Native American people are made. It is for this reason that The George Washington University has determined to seek an opportunity to contribute to Native American endeavors in this, our capital city.

Washington, D.C. increasingly offers an impressive collection of resources related to this field. These include, for example, this Committee and its staff, federal agencies concerned with Indian affairs, the National Archives, and the National Museum of the American Indian, among others. Moreover, Washington offers the opportunity to develop a National Center for Native American Studies and Policy Development that would be different in its focus from centers in other parts of the country and which would work in a complementary and supportive role with these other programs.

The George Washington University is considering the establishment of a National Center for Native American Studies and Policy Development to provide an objective scholarly resource for the study of national policy issues related to Native Americans. We would also hope to design educational programs to provide training in government for tribal leaders to give them access to skills useful both at home and in their representative roles with the federal government.

These are broad purposes that can only be served by an academic, degree-granting institution of higher learning here, in the nation's capital. The George Washington University has an excellent Law School, Public Administration program, programs in other fields related to Native American interests and faculty in a variety of disciplines with expertise in policy studies. We believe our unique qualifications to undertake establishment of such a Center indeed give us a responsibility to seriously explore that possibility.

It is, of course, impossible to fully delineate the scope of the National Center's work prior to a full study, which must involve members of the Native American community. Some preliminary discussions have suggested need for a program in our Law School that would offer a Masters degree in Law (LL.M.) with a specialty in Native American law to Native American and other students. These students would serve internships in the federal government while attending GW and would return to their own communities with an enhanced ability to work, on behalf of Native American concerns, with the government in Washington.

Others have suggested the need for the Congress and agencies to have available the objective research findings of university scholars when considering policy initiatives. Learned testimony before this committee in the past has mentioned the need for a national clearinghouse for historical data regarding Native Americans and a resource of expert help to tribes attempting to document their histories. Perhaps this is another role which, by virtue of its location in Washington, the National Center would be uniquely suited to play. We would expect that the National Center would establish relationships with Indian colleges and other Native American studies centers in other parts of the country, serving and assisting them with regard to the resources they need and which are available only in the nation's capital.

Again, these are ideas that have been suggested in preliminary discussions and I cannot prejudge which of these specific efforts the National Center should undertake. That determination will require extensive planning and discussion and it is absolutely essential that Native American leaders be deeply involved in those discussions.

In order to explore this concept further will require $1 million to support the study. The University will employ as study director a person of considerable experience in Native American matters. We are already in the process of developing an advisory board, comprised of Native Americans, and we will need resources in order to bring these people to Washington to participate in discussions. It is essential that the study be thorough and our hope would be to complete it within a year to a year-and-a-half.

Mr. Chairman, I am convinced that there is a great need for the National Center for Native American Studies and Policy Development, located right here in Washington, D.C., where decisions affecting the life of Native Americans are made every day. Establishment of this Center can bring Native Americans and their concerns right here into the daily working life of the federal government in a new way and contribute to the formulation of effective national policy in this area.

Mr. Chairman, thank you for the opportunity to present this testimony to the Committee today.

TESTIMONY OF
LARRY NUCKOLLS, GOVERNOR
ABSENTEE SHAWNEE TRIBE OF OKLAHOMA
TO
THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

MAY 11, 1990

This administration took office believing that a professional working relationship could be established with the Bureau of Indian Affairs, that the expertise of the Bureau could be harnessed to complement those of the Tribe, and that, working together, the Tribe could grow governmentally and develop economically.

This has not been the experience of this administration.

Without going into great detail, examples of the reluctance of the Bureau of Indian Affairs to work with this Tribe shall be summarized below:

Some three years ago, the Tribe undertook the task of developing a Land Consolidation and Acquisition Plan (LCAP) to accomplish several tasks. Among the issues to be addressed were land acquisitions of the Tribe for the purpose of economic development, a reduction in the problem of heirship owners having minute holdings, a process of receiving donations of lands to the Tribe from private individuals, and other issues.

This document was developed with extensive technical assistance from both our local BIA Agency Realty personnel and our Area Realty personnel. Upon completion of a rough draft of the document, the LCAP was submitted to the Agency for review prior to official submittal.

The Agency reviewed the rough draft and made three suggestions to be added to the document: The Tribe added the requested information and submitted the completed document to the Agency for review and action. The Agency completed their review and except for a concern regarding manpower requirements for handling new acquistions, recommended approval of the LCAP and forwarded the document to the Area Office for further action.

The Area Office conducted their review of the LCAP and, in turn, forwarded the LCAP to the Central Office for their final action. It should be noted that the Area Office's only concern was that our proposed geographic area might be somewhat large. Except for this concern, the Area Office recommended approval of the LCAP.

Upon arrival at the Central Office level, the submitted LCAP apparently became lost and the Tribe waited literally for months, calling periodically to be told that action would be taken as soon as possible.

Month after month passed with no action nor any word from the Bureau.

Finally, some two years later, then Governor Kenneth Blanchard gained an audience with then Assistant Secretary Swimmer and complained of the lack of response. Secretary Swimmer assured Governor Blanchard that the matter would be rectified.

Again, the Tribe waited.

Several months later, the Central Office made the determination that the approval authority for such a plan lay at the Area level and subsequently sent the LCAP back to the Area Office for a decision. It is important to recall that the Area Office had previously recommended approval of the LCAP, with their only reservation being the proposed geographic size of the Plan's area.

It is not known when the Area Office received the Plan from the Central Office, however, by correspondence dated January 18, 1989, and received January 24, 1989, the Area Office disapproved the LCAP indicating that the Plan did not meet the necessary criteria for approval.

The Tribe then asked the Area Office to provide it with the specific evaluation criteria used by the Area Office in its rejection of the LCAP so that the Tribe might work toward correction of the Plan. The Tribe received no response to this request, and on February 21, 1989, filed a Notice of Intent to Appeal the decision of the Area Office, citing the non-response of the Area Office to provide the evaluation criteria to the Tribe and that our mandated 30 day deadline for service of any Appeal or Notice of Appeal was approaching as cause.

On February 24, 1989, the Tribe received correspondence from the Area Office which stated that the Area Office did not have specific guidelines which set forth criteria to be considered in taking action on our LCAP, but rather that the Area Office had developed its own sources of criteria to be considered when taking action on such plans.

It should be noted here that the same personnel who had recommended approval to the Central Office, whose only concern had been the proposed geographic size of the Plan, were now the same personnel who flatly disapproved the plan.

The Tribe submitted its Appeal and the decision of the Interior Board of Indian Appeals was to reverse the Area Director's decision to disapprove but to remand the LCAP back to the Area Office for further review; or, in the opinion of this office, to give the Area Office another chance to disapprove the plan for other reasons.

Another instance which highlights the situation with the Bureau surrounds the Tribe's efforts to enact a tribal ordinance which would allow our existing state incorporated Housing Authority to "roll-over" its operations to a tribal corporate situation, with all obligations, debts, assets, and other business functions coming under the jurisdition of the Tribe's laws as opposed to the state's laws.

A regulatory requirement for review of such an action is that the Bureau of Indian Affairs must review and not have an objection to the action prior to the Department of Housing and Urban Development's review and action relative to the Ordinance.

The Tribe, with advice and counsel from its attorneys, adopted such an Ordinance and submitted the document to the Bureau for their review and action.

Months past while the Bureau examined the Ordinance. When at last the

Solicitor's Opinion was rendered, that office had no objection to the action, but did point out, in error, that the Tribe might experience difficulty with two separate Authorities.

It should be noted that the Tribe had no intention to create a second Authority, and planned to "roll-over" the existing Authority from state corporate authority to tribal corporate authority, and the Bureau was so notified.

The Agency Superintendent, however, did have an objection to the Ordinance, and stated so in writing which delayed the submittal of the Ordinance to DHUD.

The Tribe contacted the Area Office and the Central Office protesting the Agency's actions and successfully had the Superintendent's objection overridden. In other words, the Bureau's legal counsel had no objection to the action, yet the local Bureau line officer chose to object in the face of his own legal counsel.

Again, rather than lending support to the Tribe's actions as a governing body, it points up the prevailing attitude of the Bureau to create stumbling blocks rather than to provide aid and assistance to the development of the Tribe and its membership.

There is a myriad of other situations similar to these summarized above, ranging from the Bureau's non-response to the Tribe's efforts to regulate and tax the sale of alcoholic beverages within our jurisdiction (which has been submitted to the Bureau for action some three years ago and has yet to be approved or disapproved), to overt actions at the local level to divert direct program service funds (through the IPS) to fund additional Agency overhead costs at the expense of needing Indian people, to a lack of cooperation in the Self-Determination contracting process when dealing with Tribes, and the list of deficiencies goes on.

The basic goal of this administration is to achieve the greatest degree of economic independence, to provide the members of this tribe the opportunity to earn a decent living, and to exercise the maximum degree of governmental authority that the Tribe has inherent, and to date this office has experienced nothing but obstacles from the very Agency whose sole purpose it is to aid, assist and protect Indians and their governments within the parameters set by law.

This testimony is given with the assurance that every statement herein is fully documented and that this Tribes stand prepared to provide the Committee with complete files and correspondence which verifies each statement.

Thank you for your consideration in taking actions which reduce the inefficiencies and obstacles placed in the path of Indian governments.

Sincerely,

Larry Nuckolls, Governor
Absentee Shawnee Tribe

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